



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

This hearing was convened as the result of cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for compensation from a rent increase that is above the amount allowed by law, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the filing fee.

The landlord applied for a monetary order for unpaid rent, compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, authority to keep the tenant's security deposit and/or pet damage deposit to use against a monetary award, and recovery of the filing fee.

The hearing on the tenant's application was convened on January 29, 2024 and, apart from tenant TS, those listed on the cover page of this Decision, apart from the landlord's legal counsel (counsel), were affirmed. Due to preliminary issues, the tenant's application was adjourned in order to hear both applications at the same time. An Interim Decision was made on January 29, 2024, which should be read in conjunction with this Decision and is incorporated by reference.

Those listed on the cover page of this decision attended this reconvened hearing and TS was affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed receiving the landlord's application and evidence.

The landlord and counsel submitted they had not received any evidence from the tenant. The tenant confirmed not providing evidence to the landlord. Any evidence from the tenant was therefore excluded.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issue(s) to be Decided**

Is the tenant entitled to monetary compensation from the landlord for an illegal rent increase and a return of their security deposit?

Is the landlord entitled to monetary compensation from the tenant and to retain the tenant's security deposit?

Is either party entitled to recovery of the filing fee?

### **Background and Evidence**

The tenancy between AS and the landlords began on March 1, 2022 and was set for a fixed-term through February 28, 2023, for a monthly rent of \$3250, and a security deposit of \$1625.

A tenancy agreement was signed by the tenants AS, TS and the landlords on May 31, 2023, for a start date of May 31, 2023, for a fixed-term through May 31, 2024, monthly rent of \$3800, and an added security deposit of \$275.

The tenancy ended on October 31, 2023, when the tenants vacated.

#### *Tenant's application*

The tenant submitted they were coerced into signing a new tenancy agreement because the landlords said they would be evicted if not. They believed they could not find a new place in 30 days, so they were forced to sign the tenancy agreement. The monthly rent was raised from \$3250 to \$3800, which amounts to an illegal rent increase. For that reason, the tenant submitted they are entitled to be reimbursed the amount of \$2200, or an increase of \$550 for four months.

#### *Landlord's response*

The landlord submitted that the first tenancy agreement was between them and one tenant, AS. Later in the year, they noticed another adult living on the property, along

with additional children. They also saw that outhouses were being put on the property, along with a lot more vehicles and a trailer. The other adult was TS. The landlord submitted that their insurance required them to screen any tenant on the property and their failure to do so would mean their insurance would lapse. Apart from that, having an additional occupant breached a material term of the tenancy agreement.

The landlord submitted that the parties negotiated the terms of the tenancy agreement beginning on April 4, 2023, and met in the middle as to the monthly rent amount agreed upon. The increase was due to the extra number of people living in the rental unit.

#### *Landlord's application*

The landlord's monetary claim is as follows:

Carpet seam repair- \$50.00; Laundry tub faucet- \$40.30; Tipping fee-\$7.25; Carpet cleaning-\$430.50; Paint supplies-\$179.46; Replacement glass-\$144.23; Carpet stain repair - \$1,132.11; Unpaid rent, November 2023-\$3800; Loss of rent, December 2023 to May 2024- \$22,800.00.

The tenant stated that they would not contest the laundry tub faucet, glass replacement, carpet cleaning, or the unpaid rent for November 2023.

As to the loss of rent from December 2023 to May 2024, the landlord said that the tenants provided notice by email on October 13, 2023, that they would be vacating the rental unit on November 1, 2023.

The landlord testified they began advertising the rental unit on October 13, 2023 on Castanet and Facebook for the same monthly rent. By the end of the month, they began additionally advertising on Craigslist and Kijiji. By mid-November, they reduced the monthly rent requested to \$3500.

The landlord testified that it is always more difficult to find new tenants in that area in the winter months. The landlord said they had a lot of interested parties, but they were not suitable. For instance, some would come with multiple sets of tenants. Further, in that area, due to the change in the law regarding short term rentals, there is an increase in furnished rentals for a periods of a few months, which led to less interest. The landlord submitted that the monthly rent requested has not been reduced from \$3500, but there

is also a “or best offer” clause as well. To date, they have not acquired a new tenant, but there is a good possibility of another tenant starting in May 2024.

In response, the tenant submitted that the rental unit is a 5-bedroom home, in an area with a tight rental market. The tenant testified that the reason the landlord could not find new tenants before now is that the monthly rent is too high and it is not worth it in that community. The tenant said the landlord is not doing their due diligence and they are happy to wait to collect the monthly rent of \$3800 from the tenants rather than reduce the rent.

The tenant submitted that the landlord agreed they could vacate if they gave 30 days notice.

As to the other claims, the landlord referred to the move-in and move-out condition inspection report and their documentary evidence.

The tenant testified near the end of the hearing they were not really fighting the claim for damages, as they recognized the carpet was stained, though they did try to clean it. They said the carpet seam was reasonable wear and tear, but were overall not contesting it. The tenant said that TS was a contractor and could have done more work to repair the walls and paint, but was not allowed to do so.

## **Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

### *Tenant's application*

In this case, the tenants did not receive a rent increase notice. Rather, on May 31, 2023, the parties, this time including TS as an additional tenant, signed a new tenancy agreement after negotiating terms as to monthly rent, an additional security deposit, and an additional tenant and occupants, and the tenants agreed to pay the rent of \$3800. I find this was not a rent increase that was imposed by the landlord. I find the parties entered into a new tenancy agreement that replaced the former tenancy agreement. I find this was a fairly negotiated agreement based on the circumstances at the time due to the additional occupants and vehicles.

As the parties negotiated the terms of the agreement, I find insufficient evidence of duress by the landlord to sign a new tenancy agreement. If the tenants did not want to sign the tenancy agreement, they were at liberty to not sign.

As to the tenant's assertion that one incorrect number on the street address invalidated the contract, I reject that claim. I find the incorrect number was a clerical error and the correct address appears at the bottom of the first page of the addendum.

Based on the above, I find the tenants have failed to prove a violation of the Act by the landlord. I dismiss the tenant's application in full, without leave to reapply.

### *Landlord's application*

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the tenant breached section 45(2) of the Act when they ended the fixed-term tenancy earlier than the date of the fixed-term. The tenant was responsible for paying the monthly rent under the terms of the fixed-term tenancy agreement through May 31, 2024, subject to the landlord's obligation to mitigate their loss.

### *Unpaid rent for November 2023*

Due to the insufficient notice from the tenant and their breach of the Act and tenancy agreement which did not allow the landlord a full month to advertise and find new tenants, I find it reasonable to award the landlord compensation of the monthly rent for the month after the tenants vacated, or \$3800. For this reason, I find the landlord has established a monetary claim of \$3800.

### Loss of rent, December 2023 to May 2024

In this case, I accept the undisputed testimony from the landlord that in mid-November 2023, they reduced the monthly rent requested to \$3500, which I find was an attempt by the landlord to mitigate their loss. For this reason, I find the landlord established a monetary claim of \$3800 for the loss of rent for December 2023.

As to the monetary claim for loss of rent from January to April 2024, I find the landlord submitted insufficient evidence that they did whatever was reasonable to mitigate their loss. I find it reasonable that if the landlord were not able to secure new tenants at the then current monthly rent of \$3800 or the reduced monthly rent of \$3500 by the end of December 2023, the landlord would have reduced the asking price again in January 2024, then seek the rent difference from the tenant, and they did not. I do not find the term, "or best offer", is enough to satisfy that the landlord reduced the asking price. Apart from that, I was not provided copies of the rental ads so that I could examine the content of the ads. I find it reasonable to conclude that the monthly rent requested was not the market rate and a reduction in rent would have been appropriate.

I dismiss the landlord's claim for unpaid rent for January 2024 to the end of the fixed-term, without leave to reapply.

### Remaining claims

The tenant ultimately did not contest the remaining claims and for this reason, I grant the landlord a monetary award for carpet seam repair of \$50.00, laundry tub faucet for \$40.30, tipping fee of \$7.25 for root disposal, carpet cleaning for \$430.50, paint supplies for \$179.46, replacement glass for \$144.23 and carpet repair of \$1,132.11. These claims as to the amount were supported by the documentary evidence of the landlord.

I grant the landlord a monetary award of \$1983.85.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application under section 72 of the Act.

To date, the original security deposit of \$1625 has accumulated interest of \$44.26.

The subsequent addition to the security deposit of \$275 has accumulated interest of \$5.23.

I direct the landlord to keep the tenant's security deposit of \$1900, which has now accumulated total interest of \$49.49, in partial satisfaction of their monetary claim.

## Conclusion

I grant the landlord a monetary order in the amount of **\$7734.36** under the following terms:

Monetary Issue	Granted Amount
Loss of rent owed under the tenancy agreement, November	\$3800.00
Loss of rent owed under the tenancy agreement, December	\$3800.00
Remaining claims	\$1983.85
Filing fee	\$100.00
Security deposit	-\$1900.00
Interest on security deposit	-\$49.49
<b>Total Amount</b>	<b>\$7734.36</b>

Should the tenants fail to pay the landlord this amount without delay, the monetary order must be served upon the tenants for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are cautioned that costs of such enforcement are recoverable from the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2024

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Residential Tenancy Branch