

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

It also dealt with the Tenants' Application under the Act for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Both the Tenants and the Landlord's agent attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

Both the Landlord and the Tenants acknowledged receiving the Proceeding Packages.

### **Service of Evidence**

Both the Landlord and the Tenants acknowledged receiving the other party's evidence.

### **Issues to be Decided**

Should the Tenants be ordered to pay the Landlord monetary compensation?

Should the Landlord be ordered to pay the Tenants monetary compensation?

What should happen to the security deposit?

Should either party be entitled to recover the filing fee?

## **Background and Evidence**

The tenancy began on August 1, 2023. Monthly rent during the tenancy was \$2,500.00. The Tenants paid a security deposit of \$1,250.00 at the outset of the tenancy, which the Landlord still holds.

The Tenants reported a number of issues during the tenancy, including bed bugs, a disruptive neighbour, mice, and issues with the heating system. The Tenants' claims arise from these issues, which they say the Landlord did not respond to appropriately. I will address each in detail below.

The Landlord's claim arises from the end of the tenancy. The Landlord says that the Tenant only gave 5 days of notice before moving out of the rental unit on January 31, 2024. As a result, the Landlord says that they lost rental income for three months and were only able to re-rent the unit on May 1, 2024.

## **Analysis**

To be awarded compensation for a breach of the Act, the party claiming compensation must prove:

- the other party has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- they acted reasonably to minimize that damage or loss

## **Should the Tenants be ordered to pay the Landlord monetary compensation?**

The Landlord says that the Tenants gave 5 days' notice before vacating the rental unit on January 31, 2024. The tenancy agreement was a fixed term agreement ending on July 31, 2024. The Landlord said that they showed the rental unit 2 times a week for several months and were only able to rent the unit out as of May 1, 2024. As a result, they did not have rental income for February, March and April 2024. The Landlord submitted a Craigslist ad showing that the unit was posted on Craigslist in late January 2024 (when the Tenants said they were moving out). However, the ad says that the unit is a one-bedroom, when in fact it is a 2-bedroom. The Tenants submitted evidence showing that the Landlord posted a 2-bedroom rental unit on Craigslist on February 20, 2024.

I agree that the Tenants gave short notice to the Landlord, and that in doing so, they failed to comply with the tenancy agreement, which provides that the tenancy was supposed to end on July 31, 2024.

However, I am not convinced that the Landlord acted reasonably to minimize their damage or loss. I find that they did not post the correct rental unit in late January, stating that it was a 1-bedroom rather than a 2-bedroom apartment. This likely contributed to the delay in finding new tenants. In addition, the Landlord did not submit any evidence showing the scope of their efforts in March and April 2024. In particular, they did not submit any corroborating evidence that the rental unit was shown 2 times a week for several months.

In the circumstances, I find that the Landlord is entitled to half a month of compensation, in the amount of \$1,250.00, because had the Landlord posted the proper rental unit when notice was given, new tenants would likely have been found by February 15, 2024.

### **Should the Landlord be ordered to pay the Tenants monetary compensation?**

The Tenants have four monetary claims against the Landlord. I will address each in turn.

#### *Bedbugs*

The Tenants said that they spent \$463.70 at Canadian Tire to purchase supplies to address bed bugs in the rental unit. They said that they took steps to address the issue after complaints to the Landlord were made for one month and nothing was done. The Tenants evidence shows that they informed the Landlord of the issue on November 18. They said that the Landlord did not do anything and so they purchased a vacuum cleaner and a heat gun from Canadian Tire. In a text message on December 5, the Landlord said he would hire a pest control operator but that the Tenants would have to pay for the treatment.

The Landlord said that the Tenants moved in in August and reported the bed bug issue in November. They said that they arranged a pest control inspection and that treatment was done on December 12, 2024, following an inspection on November 27, 2023. They said that the pest control operator said that the 8 units surrounding the rental unit were not affected by bed bugs. The Landlord said that the cause of the bedbugs was used furniture brought into the rental unit by the Tenants.

I am not convinced that this claim is well founded. The compensation claimed relates to the purchase of a vacuum cleaner and a heat gun from Canadian Tire and not payment of treatments from a pest control operator. I am not convinced that this was a prudent or reasonable approach to addressing the issue. Indeed, clearly the problem persisted after the purchase of these items because when the pest control operator attended a few days later, there were still bed bugs. While I am concerned by the Landlord's response, I find that the Landlord ultimately complied with the Act by hiring a pest control operator. This claim is dismissed. To be clear, however, I do not find that the bed bug issue was caused by the Tenants.

### *Heating Inspection*

The Tenants said that between October 2023 and January 2024 the heating system did not work properly. They said that their rental unit was uncomfortably cold at night because the heating system would simply shut off. They submitted pictures showing ice on the inside of the windows. The Tenants said that they repeatedly informed the Landlord of this issue, but that nothing was done. The Tenants said that they paid a professional \$130.21 to inspect and attempt to repair the system. The Tenants submitted evidence showing that the professional made a number of recommendations to address the heating issue.

The Landlord said that the building has central heating and the Tenants' unit was the only one with any issue. The Landlord said that he fixed the problem repeatedly by releasing air from the pipes. He said that it was not necessary to hire a professional.

I accept that there was a heating problem in the rental unit – this is confirmed by the visible ice on the windows and the Landlord's acknowledgment that he had to regularly attend to address the issue. I find the Landlord's efforts were insufficient and that a professional should have been called. I find the Tenants' steps to attempt to resolve the issue arise from the Landlord's breach of the Act in failing to maintain and repair the rental unit, and I award the Tenants \$130.21.

### *Housing agency costs*

The Tenants claimed \$1,300.00 arising from the hiring of a housing agency to find a new rental unit. The Tenants said that they had to move because of the state of the rental unit, including the issue with heating, the disruption from the neighbour and bedbugs/mice. They also said that it was necessary to hire an agency because the Landlord did not give them a good reference. On one occasion, they had found a new place to live but ultimately were not approved after the prospective landlord called the Landlord.

I accept that the Tenants moved because of a breach of the Act. Specifically, the Landlord did not take steps to address the heating issue in the rental unit, making it quite uncomfortable for the Tenants and their children, particularly at night. This left the Tenants with no choice but to find alternative living accommodation. The Tenants said that they had to hire the housing agency because they were newcomers with little background and had no real history in Canada, making them unattractive as prospective tenants. I find this to be reasonable. I accept that the cost was the result of the Landlord's requirements under the Act. Had the Landlord properly maintained and repaired the rental unit and the heating system in particular, the Tenants would not have incurred this cost because they would have stayed in the rental unit. I therefore award the Tenants \$1,300.00.

### *Rent reimbursement*

The Tenants claimed \$10,000, which is the equivalent of 4 months rent, arising from the various problems in the rental unit. In addition to the problems detailed above, the Tenants said that the downstairs neighbour would repeatedly disturb them by banging on the ceiling and yelling at them. The Landlord said that a lot of time and energy was spent addressing this issue, including by encouraging the parties to be more friendly and understanding towards one another. In addition, the Tenants said that there was a mice infestation. The Landlord said that the Tenants hired an exterminator to address this issue and that the Landlord paid for it.

The Tenants appear to be claiming that they should not have to pay any rent for four months because the Landlord breached their quiet enjoyment of the rental unit. I find the Tenants claim to be exaggerated – complete rent reimbursement would require conduct far beyond anything the Landlord did (or did not) do. I find that the Landlord attempted to mediate between the neighbours and I also find that the mice issue was addressed because the Landlord paid for the exterminator.

I do find, however, that the Landlord's failure to address the heating issue in a satisfactory and permanent manner gives rise to compensation for breach of quiet enjoyment. In particular, the Tenants said that they (and their children) could not sleep well because of the cold and that their children became sick. I find that this issue persisted between late October and January, or approximately 3 months. I find it is appropriate to award the Tenants \$1,500.00 in relation to breach of quiet enjoyment.

### **What should happen to the security deposit?**

Section 38 of the Act requires the Landlord to either apply for dispute resolution or return the deposit within 15 days of the tenancy ending or receipt of the Tenants' forwarding address. The Landlord did that by applying for dispute resolution on February 11, 2024, which is within 15 days of January 31, 2024 (the end of the tenancy).

The security deposit can therefore be retained in satisfaction of compensation owed by the Tenants to the Landlord, as detailed below.

### **Should either party be entitled to recover the filing fee?**

Both parties were successful and are therefore entitled to recover the filing fee.

## Conclusion

The Tenants are entitled to a monetary order of \$2,943.29 based on the following:

Monetary Issue	Granted Amount
Heating system inspection	\$130.21
Relocation costs	\$1,300.00
Loss of quiet enjoyment	\$1,500.00
Less – compensation due to Landlord	-\$1,250.00
Security deposit with interest	\$1,263.08
Landlord recovery of filing fee	-\$100.00
Tenants' recovery of filing fee	\$100.00
<b>Total Amount</b>	<b>\$2,943.29</b>

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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

Dated: June 25, 2024

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Residential Tenancy Branch