



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP c/o Metcap Living Management
Inc and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSDS-DR, FFT

MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL

Introduction

This hearing dealt with an application by the Tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the Landlord to return the security deposit pursuant to section 38.
- An order requiring the Landlord to reimburse the Tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the Landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.
- Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the Tenant to reimburse the Landlord for the filing fee pursuant to section 72.

The agents L.M. and D.P. attended for the Landlord.

The Tenants attended.

Preliminary Issue: Service

Each party acknowledged receipt of the other party's documents including the written submissions.

Issue(s) to be Decided

Is the Tenant entitled to the return of their security deposit and reimbursement of the filing fee?

Is the Landlord entitled to damages, authorization to retain the security deposit, and reimbursement of the filing fee?

Background and Evidence

The parties submitted considerable testimony and documents in a hearing of 3.6 hours.

Overview of Claims

The Tenant requested return of their security deposit and interest less an agreed amount for a cleaning fee:

ITEM	AMOUNT
Security deposit and interest	\$1,842.45
Filing fee	\$100.00
(Less cleaning fee, agreed upon)	(\$409.50)
TOTAL	\$1,532.95

The Landlord claimed the Tenant ended a fixed term tenancy agreement early and is responsible for loss of two months rent, liquidated damages in the tenancy agreement in the amount of one month's rent, and the cleaning fee, for a total of **\$11263.50**.

Tenancy

The parties agreed as follows.

The fixed term tenancy began on October 31, 2023. The rent was \$3,618.00 and the security deposit was \$1,809.00. The Tenant moved out January 27, 2024 before the end of the term.

Tenant's Evidence

The Tenant testified as follows.

On January 1, 2024, the Tenant was not able to pay rent when it fell due. The agent with whom the Tenant had been dealing, M.T., was away on vacation. During the month of January 2024, the Tenant dealt with other agents, S.M and G.P., who were not called as witnesses.

When the January rent was due, the Tenant contacted S.M. about the unpaid rent. S.M. informed the Tenant they had until January 15, 2024 to pay.

The Tenant paid the rent in full on January 16, 2024.

On January 20, 2024, the Tenant received a 10 Day Notice by registered mail requiring them to move out by January 28, 2024. A copy of the Notice was submitted which is in the standard RTB form. The Notice is signed January 9, 2024 and stated the Tenant is in arrears of rent. The Notice required the Tenant to pay the rent within five days of receipt or vacate by January 28, 2024.

The Tenant immediately sent a text to M.T. which was forwarded to the agent S.M. The Tenant submitted a copy of the text dated January 20, 2024. The Tenant apologized for the delay in paying the rent on January 16, 2024 and asked for permission to stay in the unit. S.M. replied saying she would notify the property manager M.T. who would contact the Tenant. S.M. did not say the Notice was cancelled or that the Tenant could stay in the unit.

The Tenant believed they were being evicted because they were late paying rent (January 16 instead of January 15, 2024). They did not dispute the notice. They stated they contacted the RTB and received information that they had to move out unless the Landlord withdrew the Notice.

On January 22, 2024, not having heard from the Landlord, the Tenant assumed they were being evicted and legally had to move out. They were stressed out, searched for another unit, and placed a deposit on one. The Tenant said they wanted to remain in the unit but believed they had no choice but to move out.

On January 24, 2024, the Tenant asked agent G.P. for their deposit back as they were moving. G.P. replied saying they did not have to move out as their rent was paid; if they vacated, they would be responsible for a considerable financial claim.

The Tenant told G.P. they had already committed to another unit. They had no choice but to move.

Accordingly, the Tenant moved out January 27, 2024 and left keys and their forwarding address (incomplete) in the administration mailbox for the Landlord.

The Tenant believes that the Landlord knew on January 20, 2024 that they were moving out January 27, 2024. The Landlord did not retract the 10 Day Notice. The Landlord did not act in a timely manner to inform them the Notice was withdrawn, and they could stay.

The Landlord was slow in inspecting the unit. The Landlord chose to paint the unit which delayed availability; the Tenant had only occupied the unit for two months. The Landlord delayed in advertising the unit for rent. Given the current housing market, the Landlord should have had new Tenants move in right away on February 1, 2024. Instead, they did unnecessary cleaning and painting and delayed advertising the unit. When advertised, the Landlord made it more difficult to rent the unit by asking for more rent.

Landlord's Evidence

The Landlord testified as follows.

The Tenant knew or ought to have known that they could stay in the unit as they had paid their rent in full. The Landlord denied they had any obligation to assure the Tenant they could stay. The Tenant failed to give any notice they were moving out. The Tenant prematurely ended a fixed term tenancy without reason.

M.T. collected the keys and forwarding address until her return from holidays on February 5, 2024 and the Tenant "skipped". She conducted a condition inspection report on move-out without notice to the Tenant and without the Tenant being present as they had vacated improperly and without notice.

The Landlord arranged to have the unit cleaned and painted in a timely, normal manner. The Landlord advertised the unit for rent February 19, 2024 for \$90.00 more a month than the rent paid by the Tenant which was an insignificant increase. The Landlord acted promptly in advertising the unit. The unit was rented effective May 1, 2024.

The tenancy agreement contained a liquidated damages clause requiring the Tenant to pay the amount of one month's rent in the event of early termination.

The Tenant failed to give notice, ended a fixed term tenancy without a reasonable explanation, and are responsible to pay the Landlord the damages claimed.

The Landlord received the correct forwarding address on February 28, 2024 and filed an Application for Dispute Resolution within the 15-day period.

Analysis

Credibility

I find the Tenant's supported testimony to be a matter of fact and credible account of what has taken place between the parties. I find their version of events is the account which a practical and informed person would readily recognize as reasonable and reliable.

Accordingly, I give the Tenant's evidence the greatest weight. Where their evidence differs, I prefer the Tenant's version of what took place.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Standard of Proof

Rule 6.6 of the Residential Tenancy Branch Rules of Procedures state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the Tenant to prove entitlement to the return of the rent, utilities and security deposit.

Four-Part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the Landlord to prove the Landlord is entitled a claim for a monetary award. I find the Landlord has failed to establish that the Tenant breached their obligations under the tenancy agreement or the Act.

I find the Landlord is responsible for the Tenant's conviction that had to move out of the unit by January 28, 2024, as stated in the Notice. The Tenant immediately sought advice and help from the Landlord when they received the Notice on January 20, 2024. The Landlord did not tell the Tenant they cancelled the Notice, and they could stay. The Tenant reasonably concluded by the Landlord's actions that they were required to move out by January 28, 2024.

I also find the Landlord has not proven that they mitigated their losses as required. Where a Tenant breaches their fixed term tenancy agreement, the Tenant may be held liable to compensate the Landlord for loss of rent up to the end of the fixed term. Section 7 of the *Act* provides that where a Landlord claims against a Tenant for loss of rent the Landlord has a burden to prove the Landlord took made every reasonable effort to minimize losses.

In this case, the Tenant informed the Landlord on January 24, 2024, that they were moving out January 27, 2024. The Landlord did not take the customary steps when a Tenant informs the Landlord they are leaving. I find the Landlord failed to act in a timely manner in response to the Tenant's information that they were moving out January 27, 2024. No condition inspection report was scheduled or took place in the presence of both parties. The Landlord did not inspect the unit until February 6, 2024. The Landlord painted the unit. They did not advertise it for rent until February 19, and then at an increased amount.

I find the cumulative effect of the Landlord's actions to amount to unreasonable delay in advertising the unit. The landlord failed to act in a timely manner. I accordingly find that the Landlord did not mitigate their loss as required.

Considering the totality of the circumstances, I am not satisfied the Landlord has met the burden of proof on a balance of probabilities that they made reasonable efforts to mitigate losses as required under the *Act*.

I therefore dismiss the Landlord's claims without leave to reapply.

As the Landlord has not been successful in this action, I dismiss the Landlord's claim for reimbursement of the filing fee.

Security deposit

The Tenant is entitled to return of the security deposit and interest, less the agreed upon cleaning fee, and reimbursement of the filing fee in the amount claimed of **\$1,532.95**.

I accordingly grant the Tenant a Monetary Order in this amount.

Conclusion

I dismiss the Landlord's claims without leave to reapply.

I grant the Tenant a Monetary Order in the amount of \$1,532.95 which must be served on the Landlord. The Monetary Order may be filed and enforced in the courts of the province of BC.

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: July 23, 2024

Residential Tenancy Branch