

DECISION

Introduction

This hearing dealt with the Tenants' joined application for dispute resolution under the *Residential Tenancy Act* (the "Act").

Tenant YL applied for:

- compensation of \$13,092.00 for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62(3) of the Act;
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

Tenants TW and YHL applied for:

- compensation of \$14,625.00 for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62(3) of the Act;
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

The Tenants' applications were joined following initial separate hearings on July 22 and 29, 2024. The Tenants, the Landlord, and the Landlord's partner JL attended this reconvened hearing and gave affirmed testimony. JT attended this hearing as an interpreter to assist the parties.

Preliminary Matters

Service of Evidence

The Landlord confirmed receipt of Tenant YL's evidence as per the interim decision dated July 23, 2024. I find the Landlord to be sufficiently served with Tenant YL's evidence. The Landlord did not submit an evidence package.

Style of Cause

There is a discrepancy in the Landlord's name across the two applications. Pursuant to section 64(3)(c) of the Act, I have amended the applications to include both variations of the Landlord's name and to unify the style of cause.

Issues to be Decided

Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to recover their filing fees?

Background and Evidence

I have reviewed all the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord named in these applications was at all material times the tenant of the rental property, a two-bedroom condo. The Tenants were the Landlord's subtenants.

According to the Landlord, she had resided at the rental property for 5 years before deciding to sublet to the Tenants in April 2024. The Landlord explained that she went to look for a better job in another province, but had plans to move back into the rental property if she was unable to find a job.

The Landlord signed a tenancy agreement in the #RTB-1 form with Tenants TW and YHL to rent the primary bedroom of the rental property for a fixed term commencing on April 1, 2024 and ending on March 31, 2025. The monthly rent was \$1,650.00 including utilities. The Landlord also signed a tenancy agreement in the #RTB-1 form with Tenant YL to rent the secondary bedroom for a fixed term commencing on April 16, 2024 and ending on March 31, 2025. The monthly rent was \$1,270.00 including utilities. The rental property was rented to the Tenants furnished.

The Landlord testified that on April 30, 2024, she received notice from the owner of the rental property that the owner was moving in. The owner gave the Landlord two months' notice to vacate the property. The Landlord testified that she told this news to the Tenants right away.

The Tenants submit that on May 3 and 5, 2024, JL asked them to leave the property, saying that the Landlord's stepmother needed to move back. The Tenants testified that there was an in-person meeting between the parties, during which the Landlord claimed the owner of the property is her stepmother. The Tenants testified that this turned out to

be a lie, and it was admitted that the Landlord had sublet without the owner's knowledge. The Tenants testified that in a subsequent meeting on May 11, 2024, JL admitted the Landlord was a "fake" landlord and claimed that the Landlord would not be responsible under Canadian law for illegally subletting. Tenant YL submitted a copy of a one month notice to end tenancy for cause (#RTB-33) dated May 24, 2024 issued by the owner to the Landlord due to an unreasonable number of occupants in the property and subletting without permission.

The Tenants testified that they were threatened by JL to move out or the Landlord would ask the strata property management or police to kick the Tenants out. According to JL, neither he nor the Landlord had called or threatened to call the police to kick the Tenants out. JL testified that he had told the Tenants the police might be involved if the Landlord or JL's belongings left in the rental property were to go missing.

The Tenants submit that they attended multiple viewings of other rental properties on May 5, 7, 8, 10, 11, 12, and 14, 2024.

The Tenants vacated the property by May 31, 2024. The Tenants moved into another 2-bedroom condo in the dispute city, where they pay rent of \$3,000.00 per month.

The Tenants seek the following compensation:

Item	YL	TW and YHL
10 Months' Rent Difference ($\$3,000.00 - (\$1,650.00 + \$1,270.00) \times 10 \text{ months} = \800.00)	\$400.00	\$400.00
1 Year's Electricity and Internet ($\$200.00 \times 12 \text{ months} = \$2,400.00$)	\$1,200.00	\$1,200.00
Tenant Insurance	\$382.00	\$600.00
Moving Fee (\$500.00)	\$250.00	\$250.00
Move-in and Move-out Fees ($2 \times \$200.00 = \400.00)	\$200.00	\$200.00
Furniture	\$1,360.00	\$1,375.00
2 Months' Current Rent ($\$3,000.00 \times 2 \text{ months} = \$6,000.00$)	\$3,000.00	\$3,000.00
Transportation	\$300.00	\$600.00
Delaying Work and Impact on Studies	\$4,000.00	\$5,000.00
Mental Damages	\$2,000.00	\$2,000.00
Filing Fee	\$100.00	\$100.00
Total	\$13,192.00	\$14,725.00

The Tenants submit as follows:

- Two of the Tenants are on student visas and one is on a work visa. The Tenants found the listing for the rental property online and contacted the poster, JL and the Landlord. When the parties met to sign the tenancy agreements, the Landlord showed her driver's license, which had the same address as the rental property.

JL and the Landlord later confessed that they had illegally sublet the rental property without the knowledge of the owner.

- The Tenants pay for their own electricity and internet at their current rental. The Tenants claim one year's worth of electricity and internet based on the daily usage of an average household.
- The Tenants claim tenant insurance of at least \$382.00 for YL and \$600.00 for TW and YHL based on market prices.
- The Tenants claim a moving fee of \$500.00 based on market prices of moving companies. The Tenants moved with the assistance of a friend, and would need to pay a similar fee to their friend.
- The Tenants claim the value of furniture needed for their current apartment, as the rental is not furnished. The Tenants submitted screenshots of used furniture listed on Facebook as price comparisons. The Tenants do not have invoices or receipts.
- The Tenants' new living room and kitchen are small and narrow. The layout is not as good because the two bedrooms are next to each other.
- The Tenants claim two months of their current because their apartment must be rented for one year. YHL had planned to return to her home country in March 2025 due to her visa, but will need to stay another two months.
- The Tenants looked at more than 10 places to find a new place to move and went to the Residential Tenancy Branch for consultation. The Tenants claim their transportation costs.
- The Tenants were unable to work part-time or study normally for more than a month due to the situation. The Tenants claim compensation for delaying work based on a part-time hourly wage of \$25.00 and working 20 hours a week. The Tenants had insufficient study time and a serious decline in grades.
- The Tenants were verbally threatened. Since then, the Tenants' health, mood, and sleep have been terrible. YL submitted pictures of supplements.

The Landlord submits as follows:

- The Landlord is apologetic that her subleasing the rental property has caused inconvenience to everyone. Unfortunately, the Landlord lacked legal knowledge and used the wrong method. Once the Landlord understood her mistake, she had JL help take the Tenants to view other rental apartments.
- The Tenants' current rental is a better apartment. It has air conditioning. The Landlord and JL had helped the Tenants move in and would agree to pay for the rent difference. The Landlord offered to compensate the Tenants, but the Tenants did not accept the offer.
- The Landlord also told the owner of the rental property about the sublet situation and asked if the owner would keep the Tenants. The Landlord told the owner that the Tenants have good credit history, are nice people, and did not cause any damage during their stay, but in the end the owner did not agree.
- This was a first-time mistake for the Landlord. The Landlord is prepared to offer financial compensation within a reasonable range and the Landlord's financial ability. But the amounts claimed by the Tenants give the Landlord feelings of

blackmail. The Tenants cannot extort a higher amount on the basis of the Landlord's mistake.

- The Tenants did not provide evidence relating to their work such as confirmation of employment, the days the Tenants were excused from work, or why the Tenants would have been unable to work. The Tenants did not provide proof to show how their studies were affected.

JL submits as follows:

- The Tenants only submitted estimates or online comparables to market value. The Tenants have not provided any actual receipts or invoices. The Tenants cannot just ask for whatever number they want without hard evidence.
- YL provided photos of medicines purchased from outside of Canada. The medicines are also unrelated to mental damages.
- Regarding the two months of rent claimed, JL and the Landlord are not sure if the Tenants would leave their current rental at the 10-month mark or stay there for the full-term. If anything happens, the Tenants could ask their current landlord to sublet to new tenants, or JL and the Landlord could help find new tenants. For now, it is unknown, and there is nothing the parties can foresee at the moment.
- Based on the Landlord's previous BC Hydro and Shaw Cable invoices, JL estimates that electricity cost around \$40.00 per month, and internet was around \$50.00 per month with a promotion. The total would be \$90.00 per month, not something like \$200.00 per month that the Tenants are claiming.

Analysis

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.

Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 7(1) of the Act states that 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 for damage or loss that results. A landlord or tenant who claims compensation must do whatever is reasonable to minimize the damage or loss (section 7(2) of the Act).

Under section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As explained in Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, the "purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred".

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

According to Residential Tenancy Policy Guideline 19. Assignment and Sublet, when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant enter into a new agreement, referred to as a sublease. The original tenant remains the tenant of the original landlord, and upon moving out of the rental unit granting exclusive occupancy to the subtenant, becomes the “landlord” of the subtenant.

Policy Guideline 19 states that the subtenant’s contractual rights and obligations are as set out in the sublease agreement. Subtenants generally do not acquire the full rights provided to tenants under the Act. For example, if the owner ends the tenancy with the original tenant, the tenancy ends for the subtenant as well. The subtenant would not be able to dispute the owner ending the tenancy with the original tenant. It would be up to the original tenant to dispute the notice.

Policy Guideline 19 further states that while the Act does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law (pursuant to section 91 of the Act), may apply.

In this case, I find the Landlord was at all material times a tenant of the owner of the rental property. I find the Landlord became the landlord of the Tenants upon moving out of the rental property and granting exclusive possession to the Tenants in accordance with the agreements that they signed.

I find that by subletting the rental property to the Tenants without the owner’s knowledge, the Landlord breached section 34(1) of Act, which states that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. I find the owner served the Landlord with a one month notice to end tenancy for cause under section 47(1)(i) of the Act, due to subletting without permission.

Furthermore, I find the Landlord had agreed, in clause 2 of the parties’ agreements, to fixed-term tenancies with the Tenants ending on March 31, 2025. I find the Landlord

breached her agreements with the Tenants as the Tenants were forced to vacate the rental property prior to the expiry of the fixed terms. I find that through no fault of the Tenants, they had to move out by May 31, 2024 and find alternative housing.

In *Highway Properties Ltd. v. Kelly, Douglas & Co.*, [1971] S.C.R. 562 [*Highway Properties*] (pp. 354-55), the Supreme Court of Canada held that “Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.”

I will address the Tenants’ claims as follows: (a) rent difference, utilities, tenant insurance, and move-in/out fees, (b) moving and transportation, (c) furniture and two months’ rent, and (d) delaying work, impact on studies, and mental damages.

(a) Rent Difference, Utilities, Tenant Insurance, and Move-in/out Fees

I am satisfied that due to the Landlord’s breach, the Tenants were deprived of their bargain to remain in the rental property on the agreed upon terms until March 31, 2025.

I find that since June 2024, the Tenants have rented another two-bedroom condo in the dispute city, where they pay \$80.00 more per month in rent. I find the Tenants’ current rental is unfurnished, but has air conditioning. I accept the Tenants’ current rent does not include electricity and internet, though I do not find the Tenants to have provided any current bills to prove the amounts that they pay.

The Tenants also claim tenant insurance and move-in and move-out fees. However, the Tenants did not provide, for example, an excerpt from their current tenancy agreement to show that they were required to pay for these items. The Tenants have not provided any proof of actual payment for tenant insurance or a move-in fee.

Overall, I find the evidence demonstrates that the Tenants pay more for their current rental than they would have paid if they were able to remain in the rental property. I do not find the increase can be readily attributed to factors which show that Tenants’ current rental is an upgrade over the rental property. I find that in general, the Tenants have acted reasonably to mitigate their losses by quickly finding and moving into a similar property.

Considering the above, including discounts made due to the Tenants’ failure to provide proof of amounts paid, I assess the damages suffered by the Tenants at \$300.00 per month (\$80.00 rent difference + \$200.00 electricity and internet + \$20.00 miscellaneous), or \$150.00 per month for YL and \$150.00 per month for TW and YHL.

For clarity, I do not find the Landlord to be responsible for any increased costs outside of the original fixed term ending on March 31, 2025.

Therefore, pursuant to section 67 of the Act, I order the Landlord to pay $\$150.00 \times 10$ months = $\$1,500.00$ to YL and the same amount to TW and YHL.

(b) Moving and Transportation

I accept that due to the Landlord's breach of the fixed term, the Tenants were forced to search for and move to a new residence. I find these are costs that would naturally flow from the Landlord's breach.

I find the Tenants moved with the help of their friends. I do not find the Tenants to have provided evidence to show that they had paid or required to pay their friends for the move. I accept that choosing to do so can be considered a form of loss mitigation by the Tenants, and that the Tenants should still be compensated for their efforts relating to the move. However, I do not find the Tenants to have provided evidence, such as an estimate from a moving company, to demonstrate that they saved $\$500.00$ by moving themselves instead of retaining movers. I also note that the rental property was rented to the Tenants furnished. Considering the above, I find the Tenants are entitled to nominal damages equal to 10% of their claims for moving, or $\$25.00$ for YL and $\$25.00$ for TW and YHL. As explained in Residential Tenancy Policy Guideline 16, nominal damages are a minimal award. Nominal damages may be awarded where no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the Tenants attended two viewings with the Landlord or JL's assistance and 11 viewings by themselves. According to the Tenants, they relied on public transit. However, I do not find the Tenants to have submit evidence, such as actual fares paid, to prove that they incurred transportation costs of $\$300.00$ each. I find the Tenants are entitled to nominal damages of $\$1.00$ for transportation costs per person, for each viewing on the occasions that the Tenants did not receive assistance from the Landlord or JL. Pursuant to section 67 of the Act, I order the Landlord to pay each of the Tenants $\$1.00 \times 11$ viewings = $\$11.00$ for transportation.

I note that the Tenants' time or effort spent dealing with the Residential Tenancy Branch or preparing for this dispute are not compensable losses.

(c) Furniture and Two Months' Rent

I do not find the Tenants' claims for the cost of furniture and additional two months' rent on their current tenancy agreement to be damages that "may fairly and reasonably be considered either arising naturally" from the Landlord's breach of the parties' agreements, or "according to the usual course of things" from the breach itself.

I find the Tenants did not submit evidence of any actual furniture that they purchased. Furthermore, I find the Tenants would have obtained the value of any furniture that they may have purchased for their current home, which the Tenants are at liberty to retain or re-sell. I do not find there is any basis for the Landlord to buy furniture at her cost for the Tenants to keep permanently.

I do not find the fact that the Tenants ended up signing a one-year fixed term lease with their new landlord to have been the natural result of the Landlord's breach. I also do not find this would have been reasonably foreseen by the Landlord. As such, I do not find the Landlord can be held responsible for any consequences of the new fixed term. I do not find there is any basis for the Landlord to pay for two months' worth of the Tenants' accommodations.

I dismiss the Tenants' claims under this part without leave to re-apply.

(d) Delaying Work, Impact on Studies, and Mental Damages

I find the Tenants' claims for work, study, and mental damages to be only tangentially related to the Landlord's breach.

Furthermore, I do not find the Tenants to have provided evidence showing that:

- the Tenants all had jobs and were working
- the Tenants were required to take time off work due to moving or looking for a new residence
- the amount of wages actually lost by the Tenants, and
- that the Tenants had acted reasonably to mitigate their losses, because it was not otherwise possible for the Tenants to move or look for a new residence outside of their work hours.

I do not find there is evidence to demonstrate that the Tenants' studies were negatively impacted, with financial losses due to the Landlord's breach.

I do not find the Tenants to have submitted medical evidence, such as an opinion from a medical professional, to prove that the Tenants had suffered any physical or mental injuries due to the Landlord's breach to warrant compensation.

Overall, I do not find the Tenants to have proven that they suffered any compensable loss with regards to their work, studies, or health. I dismiss these claims without leave to re-apply.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

The Tenants' applications generally repeat the basis for their monetary claims under this part. They do not specify any section of the Act, the regulations, or agreement for which the Tenants seek compliance from the Landlord.

Since the parties' tenancies have already ended, and I have already addressed the Tenants' monetary claims above, I do not find it is necessary to make further orders at this time. I dismiss the Tenants' claims under this part without leave to re-apply.

Are the Tenants entitled to recover their filing fees?

The Tenants have been partially successful in their applications. I find the Tenants are entitled to recover their filing fees from the Landlord under section 72(1) of the Act.

Conclusion

Pursuant to sections 67 and 72(1) of the Act, I grant Tenant YL a Monetary Order of **\$1,636.00**, calculated as follows:

Item	Amount
Damages for Breach of Fixed Term (\$150.00 × 10 months)	\$1,500.00
Nominal Damages for Moving	\$25.00
Nominal Damages for Transportation	\$11.00
Filing Fee	\$100.00
Total Monetary Order for Tenant YL	\$1,636.00

Pursuant to sections 67 and 72(1) of the Act, I grant Tenants TW and YHL a Monetary Order of **\$1,647.00**, calculated as follows:

Item	Amount
Damages for Breach of Fixed Term (\$150.00 × 10 months)	\$1,500.00
Nominal Damages for Moving	\$25.00
Nominal Damages for Transportation	\$22.00
Filing Fee	\$100.00

Total Monetary Order for Tenants TW and YHL	\$1,647.00
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The Tenants must serve the Landlord with these Orders as soon as possible. If the Landlord does not comply with the Orders, the Orders may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

The remaining claims in the Tenants' applications are dismissed without leave to re-apply.

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: September 25, 2024

Residential Tenancy Branch