



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding SOUTH CAMBIE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

This hearing convened on August 27, 2024 as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Tenants applied for compensation for a monetary loss or other money owed, return of their security deposit and recovery of the filing fee.

The Landlord applied for compensation for a monetary loss or other money owed, authority to keep the Tenants' security deposit, and recovery of the filing fee.

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

The parties confirmed receipt of the other's applications and proceeding package and their evidence.

The August 27, 2024, hearing was adjourned, and reconvened on September 19, 2024, and was adjourned. The final hearing occurred on October 24, 2024. At the various hearings, various witnesses attended.

Interim Decisions were issued after the two adjourned hearings, which are incorporated by reference and should be read in conjunction with this Decision.

At all hearings before me, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make their submissions.

I have reviewed all oral, written, and other 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 made in the 211-minute hearing will be reproduced in this Decision.

Issue(s) to be Decided

Are the Tenants entitled to compensation for a monetary loss or other money owed from the Landlord, a return of their security deposit, and recovery of the filing fee?

Is the Landlord entitled to compensation for a monetary loss or other money owed, to keep the Tenants' security deposit, and recovery of the filing fee?

Background and Evidence

The written tenancy agreement shows a tenancy start date of June 1, 2024, set for a fixed-term through May 31, 2025, monthly rent of \$2500 and a security deposit of \$1250 paid by the Tenants.

Tenants' application

In their amended application, the Tenants wrote the following

We have ample reasons and evidence of unsafe living conditions. We are looking to annul and dissolve our lease agreement immediately and foresee our June rent and security deposit returned in a timely manner. We did not move anything into the unit since it was disgustingly filthy, unfit and unsafe. The unit had deteriorated dramatically in the month since our viewing. The extent of damage (falling roof/leaks), filth and unfitness for tenants was alarming. We also have reason to understand the basement unit is not legal as we could find permits for a second living suit aside from a single family abode at this address.

The Tenants' monetary claim varied, from \$2500, which was the first month's rent paid and \$1250 for their security deposit, to an amended claim of \$3289.50. At the hearing, the Tenant confirmed their monetary claim is \$2500 and \$1250.

The Tenant submitted that they are entitled to break the lease and have the first month's rent be repaid, along with their security deposit.

The Tenant submitted that they were misled and deceived, as the rental unit was unsafe and unlivable. The Tenant described the rental unit as filthy, disgusting, and unsafe. For instance, the rental unit deteriorated significantly in the month since they first viewed the property in the beginning of May 2024. Further, the electrical issues that

were present at the beginning of the tenancy, and not disclosed to the Tenants, posed a fire hazard and violation of the Act.

The Tenant went on to submit that the rental unit violated health and safety standards, there was a rat infestation, as shown by the photos of many rat traps around the property, which also included the rodents burrowing into the insulation. The Tenant submitted they saw 2 rats on their visit to the rental unit.

The Tenant submitted that their windows were not lockable, which presented a safety issue, as the ground level basement windows were on a busy street. The Tenant submitted that the electrical power provided to the rental unit was inadequate for their use.

The Tenant said that they had an initial walk-through of the rental unit on May 31, 2024, but felt rushed by the Landlord's agent as the agent had another appointment. At the move-in, they noticed the huge leak in the bathroom and while there, saw a huge rat. The Tenant said the electricity was not up to code, and when they spoke to the upper tenant, they were informed that there had been multiple issues with the electricity.

Tenant's witness, CS (father of Tenant ES)

CS testified that what they observed at the property was that it was in a good bit of disrepair and felt that the Tenants were being rushed. CS said they noticed windows that were unlockable and was told that the electrical panel was set up with 60 amperage, which is not enough for 2 units. CS said they saw a big rat run across the front door and the Landlord's agent said they would look into it. The windows were single pane and anybody could enter the ground level unit from outside. CS stated that the door lock panel had a low battery, and since there were no front door keys, the Tenants could easily be locked out.

In cross examination of CS, CS said they talked to the upper tenant who said there had been multiple break-ins and they had to secure their upper unit. CS said the upper tenant said it would be difficult to use appliances at the same time, as there was insufficient power. CS said the only window that locked was the bathroom, but the front-facing window did not. The rental unit was in an unsanitary condition.

Landlord's response

The Landlord referred to their evidence and submitted that the Tenants seemed to be in a hurry to dissolve the tenancy immediately, but they did not give the Landlord a reasonable time to correct any issues. The Landlord submitted that everything seemed to be good on May 31, 2024, and they promised the Tenants that day that everything would be fixed and then the next day, the Tenants immediately terminated the tenancy. The Landlord submitted that there was no timeline given them, so there can be no breach of a material term. The Landlord submitted they were waiting for the electrical permits and the Landlord has now done all the upgrades. The Landlord argued that the rental unit was in an old home, and the condition complied with the requirements due to the age and character of the home.

The Landlord said that their evidence shows that all the work that needed to be done was done by July.

The Landlord submitted that the upper tenant's email shows that all the work was being done and additionally, they confirmed that no rats have been caught in the traps.

The Landlord submitted that the Tenants ended the tenancy the same day as the walkthrough, that the Tenants received bad information from the upstairs tenant and they have never had a problem with the windows.

Landlord's witness, RL

RL stated they were the showing agent and that they showed the property initially to Tenant ES and their agent on April 25, 2024, and to all three Tenants on April 28, 2024. At that time, ES said they liked the rental unit and looked forward to living there. At that time, they proceeded with the application package. RL stated that at that time, there were no requests from the Tenants.

Landlord's witness, SL

SL is the property manager, who stated they showed ES and CS the rental unit on May 31, 2024. Before the Tenants got there, they were inspecting the rental unit and identifying issues. They notified the Tenant of a leak, found that the batteries were low, and noticed that there were no locks on the windows, so they came back with a stopper for the living room window, which was the only window without a lock. It was agreed this was a big issue, but that it would be fixed. SL said the Tenant agreed on all the issues at the end of the walkthrough, they said everything was good, and the agent

promised that everything would be fixed. After the walkthrough, they signed the move-in condition inspection report (Report).

After the walkthrough, they received a call from CS who said they received a call from the upper tenant, who informed them that there was a meth lab close, there were rats in the residential property and they would not want their child living there. At that time, they asked for the rent and security deposit back. SL said they sent the Report and pictures to the Tenants 2-3 days afterwards. The Report was signed by Tenants ES and IDL.

In cross examination of SL by ES, ES walked through the contents of the Report, but noticed there was no mention of the windows or leaks. SL also said they did not know about the locks.

When concluding the second hearing, I asked Counsel if they provided a copy of the Report, and Counsel said no, as it is the Tenant's burden of proof.

Landlord's witness, TY

In response to questions, TY said they have been a contractor for a number of years and have been licenced in BC since 2020. TY said that the electrical panel complied with government code at the time it was built, in the 1960s. The Landlord asked them to upgrade the electrical panel in April or May, and that the electrical panel hot water system have now been upgraded. The old panel was 60 amperage and it is now 200 amperage. TY said they had to apply for the electrical permit before they could upgrade the panel, and the permit was applied for in July and passed the final inspection in August 2024.

In cross examination by ES, TY said they did some electrical work ahead of time in preparation of the upgrade at the Landlord's permission, at the end of June, and then after that, they had to meet the requirements.

Landlord's application

In their application, the Landlord wrote the following:

The Landlord had no choice but to find another tenant with a reduced monthly rent of 300 per month for one year after the tenants terminated the agreement on June 1, 2024. Also, the Landlord suffered rent loss from June 1 to June 17, 2024

for 16 days. The tenant replacement fee is 1,312.5. Therefore, the monetary loss is calculated as: $300/m \times 12 + 16 \text{ days} \times 2,500/m/30 + 1,312.5 = \$6,245.83$. The landlord is requesting to keep the first month's rent of \$2,500 and the security deposit of \$1,250.

The Landlord's submissions include written statements and emails between the parties, which captures their evidence at the hearing.

The Landlord's agent told the Tenants that the rental unit remained in essentially the same condition as when they first viewed it, and confirmed that the stain on the ceiling was from an old leak and that it would be taken care of by the Landlord. The Tenants were told by the Landlord's agent that the Landlord was waiting for a permit to upgrade the electrical system.

Counsel for the Landlord submitted that the Landlord should have been given sufficient time to remedy the issues before the Tenants terminated the tenancy agreement, which have all been completed.

The Landlord mitigated their loss as they secured a new tenant for a start date of June 17, 2024, but for a reduced rent of \$2200. The Landlord claims for this reason, the Tenants are obligated to pay the \$300 per month rent deficiency through the end of the fixed-term, or May 31, 2025, as well as the gap payment from June 1, through June 17, 2024. To date, according to Counsel, the Landlord has now spent more than \$15,000 to upgrade the home since purchasing it earlier in the year.

In cross-examination by ES, Counsel said that the Tenants were shown the rental unit two times before the walk-through.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement,

third, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their 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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' application

In this case, the undisputed evidence is that the parties agreed that a tenancy was to start on June 1, 2024, for a fixed-term through May 31, 2025, for a monthly rent of \$2500 and a security deposit of \$1,250.

The Tenants seek to recover their first month's rent paid of \$2500 due on June 1, 2024, under the terms of the written tenancy agreement, and their security deposit of \$1250 paid on May 3, 2024. The Tenants said they provided their written forwarding address on June 12, 2024, and the Landlord's application was made on June 25, 2024.

Under section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The Tenants claim that the rental unit was not liveable, and they were entitled to cancel or annul the tenancy agreement which was set for a fixed-term through May 31, 2024.

Under section 32 of the Act, a landlord is required to provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards and to make it suitable for occupation by a tenant. Under this section of the Act, the Landlord is required to make the repairs necessary to meet their requirement of the Act.

Section 44 of the Act provides for ways under which a tenancy ends and I find that none of these instances apply here.

I find in this case, the Tenants signed the written tenancy agreement and began moving a few things in but never occupied the rental unit, citing the uninhabitable condition of the rental unit.

If the Tenants had issues with the condition of the rental unit, they should have notified the Landlord in writing of their request for repairs, and the Landlord must be given a reasonable amount of time to make those repairs. In this case, the Tenants chose to end their tenancy without providing the Landlord that reasonable time.

I find it was the Tenants who breached the written tenancy agreement and further, I find the Tenants failed to do whatever was reasonable to minimize their loss. In making this finding, the Tenants had two separate viewings of the residential property, and a final walk-through on May 31, 2024. I do not find it reasonable or plausible that the condition of the home had dramatically changed in the space of a month to such a state that the rental unit became unlivable. I find it more likely than not the Tenants were fully aware of the condition of the rental unit and still signed the tenancy agreement.

I find the Tenants were legally required to pay for the monthly rent of June 2024, and for this reason, I dismiss the Tenants' claim for a return of the first month's rent payment due under the tenancy agreement. However, I will offset the \$2500 already paid to the Landlord from any monetary award granted to the Landlord.

For this reason, I dismiss the Tenants' request to recover the filing fee for this application.

The Tenants' request for their security deposit to be returned will be dealt with in the Landlord's application.

Landlord's application

Section 45(2) of the Act states that a tenant may not end a fixed term tenancy any earlier than the end of the fixed-term and which must be done by giving the landlord notice to end the tenancy at least one clear calendar month that is not earlier than the fixed term.

Therefore, I find the Tenants owed the monthly rent under the terms of the written tenancy agreement subject to the Landlord's requirement that they did whatever was reasonable to minimize their loss.

Rent difference, \$2500-\$2200, 12 months

The Landlord seeks to recover \$300 per month for the entire year of the fixed-term, as the new Tenant moving into the rental unit is paying \$2200, instead of \$2500.

I acknowledge that the Tenants failed to provide sufficient notice they were ending their tenancy, when they ended the tenancy the day it was to start.

Having said that, I must now consider whether the Landlord did whatever was reasonable to minimize their loss, as required by section 7(2) of the Act.

I find Tenancy Policy Guideline 5 applies in these matters, which provides as follows:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to: 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and 2. re-rent the unit as soon as possible..... Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

I now turn my mind to whether the Landlord submitted sufficient evidence that they did whatever was reasonable to minimize their loss and I find they did not.

I find the Landlord failed to provide evidence when they began advertising, and how often, and on what sites or for what monthly rent amount. I find it reasonable for the Landlord to start advertising soon after receiving the Tenants' Notice in order to minimize their loss. As no evidence was provided, I was unable to review the content of the advertisements. It is possible the Landlord asked for less rent for a single occupant rather than the three Tenants here.

For these reasons, I find the Landlord submitted insufficient evidence that they did whatever was reasonable to minimize their loss, their obligation under section 7(2).

As a result, I **dismiss** without leave to reapply the Landlord's claim of **\$3600** for the loss of rent, or rent deficiency, through the end of the fixed-term of May 31, 2025.

Loss of rent from June 1 to June 17, 2024

The Landlord seeks to recover the rent loss from June 1-17, 2024, or 16 days for \$1333.33. Due to the Tenants' breach of the fixed-term tenancy agreement, I find the Landlord is entitled to loss of rent from June 1-16, as a new tenancy began on June 17, 2024. The Landlord is granted a monetary award of \$1333.33.

Tenant replacement cost

The Landlord claims \$1312.50, which is \$1250 for the placement fee and GST of \$62.50.

This claim is based upon section 22 of the Addendum to the tenancy agreement and is a claim for liquidated damages which required the Tenants to pay the sum of \$1250, plus GST, if the Tenants breached the tenancy agreement by giving notice to end the fixed-term tenancy agreement early.

RTB Policy Guideline #4 (Liquidated Damages) states a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. I find the term was on the contract and the Tenants signed the addendum. Therefore, I find the Tenants are responsible for paying the liquidated damages of \$1250.

I therefore find the Landlord has established a monetary claim of **\$1250**. I do not grant the GST as this is not a part of the pre-determined, set price.

As the Landlord's application was partially successful, I grant the Landlord recovery of their filing fee of \$100.

Both applications

The Landlord holds \$2500 for the June rent paid by the Tenants. The Landlord claims to keep 16 days of the June rent, or \$1333.33, which has been granted to them. The

Landlord had a new tenant on June 17, 2024, so they had **\$1166.67** to return to the Tenants from the Tenants' June rent payment.

The Landlord is entitled to liquidated damages (tenant replacement fee) of \$1250 and the filing fee of \$100, or a total of **\$1350**.

Therefore, on the Landlord's application, the Landlord is entitled to a monetary claim of **\$183.33** (\$1350-\$1166.67).

The Tenants' security deposit of \$1250, has accumulated interest of \$18.44 through this date. From the Tenants' security deposit and interest of \$1268.44, I subtract the Landlord's monetary claim of \$183.33 that the Tenants owe from the security deposit and interest and grant the Tenants a monetary order of \$1085.11 for the remainder of their security deposit.

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

Conclusion

The Tenants' application has been dismissed.

The Landlord's application has been partially successful.

For the reasons set out above, the Landlord's monetary award has been offset by the Tenants' security deposit and the partial return of the June 2024 rent payment by the Tenants.

The Tenants are granted a monetary order of \$1085.11.

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: November 18, 2024

Residential Tenancy Branch