

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (Application) and Amendment to the Application (Amendment) under the *Residential Tenancy Act* (the Act) for:

- unpaid or lost rent;
- compensation for monetary loss or other money owed;
- retention of the security deposit; and
- recovery of the filing fee.

This hearing also dealt with the tenants' Application for:

- compensation for monetary loss or other money owed;
- the return of all or part of their security deposit; and
- recovery of the filing fee.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The parties acknowledged receipt of the Proceeding Packages and evidence from each other. No service concerns were raised. I therefore found the parties sufficiently served with the Proceeding Packages and the documentary evidence before me for the purposes of the Act. I accepted the documentary evidence before me for consideration, and the hearing of both Applications proceeded as scheduled.

Preliminary Matters

All witnesses were excluded from the proceeding unless providing testimony.

Issues to be Decided

Is the landlord entitled to unpaid or lost rent?

Is the landlord entitled to compensation for monetary loss or other money owed?

Are the tenants entitled to compensation for monetary loss or other money owed?

Is the landlord entitled to retain the security deposit? If not, are the tenants entitled to its return or double its amount?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy agreement before me states that the fixed term tenancy commenced on August 14, 2024, and was set to end on August 31, 2025. The tenancy agreement states that \$3,750.00 in rent is due on the 1st day of each month and that a \$1,875.00 security deposit was required. At the hearing, the parties agreed that these are the correct terms for the tenancy agreement and that the security deposit was paid on August 10, 2024, the full amount of which is still held in trust by the landlord.

The parties agreed that move in and move out condition inspections were completed, but that no condition inspection reports were completed or given to the tenants. The parties agreed that the tenants gave notice on August 28, 2024, by e-mail to end their tenancy on August 31, 2024. They also agreed that the tenancy ended on this date, and that the tenants have yet to provide an official forwarding address in writing. The tenants stated that although they did not provide the landlord with the forwarding address in writing, the registered mail envelope that they sent the landlord contained their address. The agent for the landlord (Agent) agreed that this envelope contained an address, but stated that neither they nor the landlord knew whether this was the tenants' official forwarding address.

Although there was no disagreement between the parties that the tenants had ended their fixed term tenancy agreement early, they disagreed about whether the tenants had the right under the Act to do so, and if so, whether they did so properly. The Agent stated that they did not, as they had promised to fix any outstanding issues and had not been provided time or access to the rental unit to do so. The tenants disagreed characterizing the rental unit as uninhabitable. They stated that it was clear to them as soon as they moved in that something was wrong as C.C. and their son both have allergies which got significantly worse after they moved into the rental unit. The tenants stated that when they inspected the rental unit, they discovered mold in the bathroom and animal hair throughout the rental unit. The tenants stated that as the rental unit was advertised as not permitting pets, they assumed that there had never been pets in the rental unit. However, when asked they acknowledged that they never inquired with the landlord or their agents whether there had previously been animals in the rental unit.

The tenants stated that they had no choice but to end their tenancy because of their allergies and unresolved issues regarding mold, blinds, and the garage door. The Agent agreed that there had been pets in the rental unit previously, and that the tenants had not inquired about this before signing the tenancy agreement and moving into the rental unit. They stated that had the tenants asked about this, it would have been disclosed. The agent also denied the presence of mold in the rental unit and argued that they were attempting to resolve the other outstanding issues for the tenants but they did not have time to do so as the tenants gave notice and moved out.

As a result of the above, the tenants sought recovery of \$400.00 in moving expenses, \$676.80 in wage loss, \$50.00 for the cost of a doctor's note, and \$1,600.00 for having to terminate the lease do to the uninhabitability of the rental unit. The Agent denied that the tenants are entitled to recovery of these amounts as they are the ones who ended the tenancy. The Agent stated that the landlord is seeking \$3,750.00 in lost rent for September 2024, as the tenants did not give sufficient notice to end their tenancy, and ended it early contrary to the Act and their tenancy agreement. They also sought \$1,875.00 in liquidated damages as set out in the addendum to the tenancy agreement.

The tenants called a witness who is a co-worker of C.C. The witness stated that beginning in mid August of 2024, they noticed changes in C.C.'s health such as sneezing and being tired. They stated that these symptoms stopped C.C.'s workflow and put strain on the team. They stated that's C.C.'s doctor linked these symptoms to mold and pet allergies, and that these symptoms resolved after the tenants vacated the rental unit. When asked, the witness acknowledged that they never visited the rental unit.

Analysis

Section 26(1) of the act says that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 67 of the Act states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

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

- the tenants failed to comply with the Act, regulation, or tenancy agreement;
- loss or damage resulted from this failure to comply;
- the amount of or value of the damage or loss suffered; and
- the landlord acted reasonably to minimize that damage or loss.

Is the landlord entitled to unpaid or lost rent?

I am satisfied based on the tenancy agreement before me, and the affirmed testimony of the parties, that a fixed term tenancy agreement was in place between the parties for the period of August 14, 2024 - August 31, 2025. I am also satisfied that rent in the amount of \$3,750.00 was due on the 1st day of each month under the tenancy agreement.

Because the tenants were subject to a fixed term tenancy agreement, they were not entitled to end their tenancy earlier than the end date for the fixed term, under section 45(1) of the Act. While the tenants *may* have been entitled to end their tenancy early for breach of a material term of the tenancy agreement under section 45(3) of the Act, the tenants acknowledged at the hearing that they did not follow the requirements of Residential Tenancy Policy Guideline (Guideline) 8 for ending a tenancy under section 45(3) of the Act. As a result, I find that regardless of whether the things alleged by the tenants are true, and whether these things would have constituted grounds to end the tenancy for breach of a material term, they did not have the right to end their tenancy under section 45(3) of the Act on August 31, 2024, as a result of the notice given on August 28, 2024, as they did not follow Guideline 8 and serve the landlord with a breach letter prior to ending the tenancy.

Based on the above, and as there is no evidence before me that the tenancy agreement was frustrated in accordance with the Act, or that the landlord and tenants mutually agreed in writing that the tenancy could end, I therefore find that the tenants breached both the Act and their fixed term tenancy agreement when they prematurely ended their tenancy on August 31, 2024.

As the tenants gave only three days notice to end their tenancy, I accept that the landlord was unable to re-rent the rental unit for September 1, 2025, and lost rent for that month. I am also satisfied that the landlord has mitigated their loss by requesting only one month's lost rent, despite the fact that the tenants ended their 12-month fixed term tenancy 11 months early. As set out in Guideline 3, where a tenant vacates or abandons a rental unit before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results. This can include the unpaid rent to the date the tenancy agreement ended, and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement. The tenants were required to pay \$3,750.00 per month under their tenancy agreement and they breached the Act in their tenancy agreement by ending their fixed term tenancy agreement early. I therefore grant the landlord the \$3,750.00 sought in lost rent for September of 2024, and I order the tenants to pay this amount to the landlord.

Is the landlord entitled to compensation for monetary loss or other money owed?

Term seven of the addendum to the tenancy agreement states that if the tenants decide to terminate the tenancy before its end date, the tenants agree to pay the landlord a liquidated cost equal to half months rent to cover re renting costs.

Neither party argued that the terms of this liquidated damages clause constitute a penalty, and based on its wording and amount, I find that it is not. I am also satisfied that it is a genuine pre estimate of the cost to be incurred by the landlord or their agents to prematurely re-rent the rental unit. As a result, and as I have already found that the tenants breached the Act and their tenancy agreement by improperly ending their fixed term tenancy agreement early, I therefore grant the landlord recovery of this amount and order the tenants to pay this amount to the landlord.

Are the tenants entitled to compensation for monetary loss or other money owed?

Although the tenants sought compensation for having to move, I have already found above that the tenants improperly ended their own tenancy. I therefore dismiss their claims for recovery of costs incurred because of the end of this tenancy, without leave to reapply.

The tenants argued that C.C.'s employment suffered because of allergies exacerbated by the conditions in the rental unit such as mold and pet hair, resulting in wage loss. However, they failed to satisfy me on a balance of probabilities that this was the case. Although they submitted a doctor's note confirming that CC suffers from allergies which have worsened since they moved into the rental unit, this information is correlational at best. It does not prove a causal link between the tenants allergies and the rental unit. The note also does not even confirm what the tenant is allergic to. It simply lists common triggers for allergies. As a result, I am not satisfied by the DR.'s note that the tenant is allergic to either mold or pets. Even if I were satisfied that the tenants were allergic to mold, they have failed to satisfy me on a balance of probabilities that there was mold in the rental unit, which the Agent denied. By their own admission, the tenants also did not ask whether there had ever been pets in the rental unit prior to renting it or moving in, Despite allegedly knowing that they have serious allergies to pets. As a result, I do not find the landlord responsible for any allergic reactions suffered by the tenant or their family members as a result of pet hair in the rental unit.

I therefore dismiss the tenants claims for wage loss without leave to reapply, as they have failed to satisfy me that the rental unit is the cause of their allergies, or that the landlord breached the Act resulting in their allergies, which was the basis for their claims for wage loss. I also dismiss their claim for recovery of costs incurred to get a doctor's note, without leave to reapply. These costs are not recoverable under the Act as the parties bear the responsibility of gathering their own evidence to support their own claims.

Is the landlord entitled to retain the security deposit? If not, are the tenants entitled to its return or double its amount?

The landlord *may* have extinguished their right to claim against the security deposit for damage to the residential property under sections (24)(2) and 36(2) of the Act. However, no such claims have been made as part of their Application and the landlord retained the right to claim against the security deposit for things other than damage to the residential property, provided they complied with section 38(1) of the Act in doing so.

The parties agreed that this tenancy ended on August 31, 2024, and Residential Tenancy Branch (Branch) records show that the landlord filed their Applications seeking retention of the security deposit on September 13, 2024. As a result, I find that the

landlord filed the Application within the timeline set out under section 38(1) of the Act and therefore had the right to retain it pending the outcome of this hearing.

As set out above, I have already found that the tenants owe the landlord \$5,625.00 for lost rent and liquidated damages. Pursuant to section 72(2)(b) of the Act, I therefore authorize the landlord to retain the \$1,893.12 currently held in trust as a security deposit an interest, towards the amount owed. The tenants' claim for its return is dismissed without leave to reapply.

Are the parties entitled to recovery of their respective filing fees?

As the landlord was successful in their claims, I grant them recovery of the \$100.00 filing fee under section 72(1) of the act. As the tenants were not at all successful in their claims, I decline to grant them recovery of their filing fee.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$3,831.88** under the following terms:

Monetary Issue	Granted Amount
recovery of unpaid rent	\$3,750.00
compensation for monetary loss or other money owed	\$1,875.00
recovery of the filing fee	\$100.00
less the security deposit and interest retained	-\$1,893.12
Total Amount	\$3,831.88

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** by the landlord as soon as possible. Should the tenants fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than \$35,000.00.

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

Dated: December 18, 2024

Residential Tenancy Branch