Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes: MNSDS-DR, MNRL-S, MNDCL-S, LRSD, FFL

Introduction

The Tenants seek the return of their security deposit, pursuant to section 38 of the *Residential Tenancy Act* (the "Act").

The Landlord seeks compensation for unpaid utilities, for loss of rental income, and for the cost of the application fee, pursuant to sections 26, 67, and 72 of the Act.

Issues

1. Are the Tenants entitled to the return of their security deposit?
2. Is the Landlord entitled to compensation?

Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy began on March 1, 2024. The tenancy ended on June 30, 2024, after the Tenants gave notice to the Landlord on June 14, 2024.

There is a written tenancy agreement pertaining to this tenancy in evidence. The monthly rent was $3,200.00 and the Tenants paid a $1,600.00 security deposit on February 15, 2024. There is a banking deposit transaction document in evidence proving the date and amount of the deposit.

At this point, it is worth noting that the copy of the tenancy agreement provided by the Tenants in their evidence appears to reflect a periodic, or month-to-month tenancy.

However, the copy of the tenancy agreement provided by the Landlord in his evidence appears to reflect that the tenancy was a fixed-term tenancy which formally began on March 1, 2024, and was to terminate on February 28, 2025. (I say formally because the Tenants moved into the rental unit two weeks early.) I will address which version of the tenancy agreement is the true version, later in this decision.

The Tenants' position is that after a "heated" discussion in early to mid-June, the Landlord said it was "okay" if the Tenants were not happy with the condition of the rental unit and wanted to move out. These various issues included mold in a sunroom, a wobbly toilet seat, and a broken closet door. The Tenants allege that the Landlord did not do anything about these issues, whereas the Landlord claims that he did.

There is a copy of the WeChat conversation from June 4, 2024, in which the following is conveyed:

[Tenant]: Hi [Landlord], we have discussed and agreed that we will end our tenancy at [address of rental unit]. We provide a notice two week before we move out. If you receive this notice, please reply this message. Thank you.

[Landlord's wife]: OK

On June 14, 2024, the parties chat further:

[Tenant]: Hi [Landlord], we will end our tenancy and move out from [address of rental unit]. If you receive this notice, please reply this message. Thank you.

[Landlord's wife]: Is it Jun 30?
[Tenant]: Yes, we will move out on Jun 30

The Tenants provided their forwarding address to the Landlord by way of a WeChat message and by posting a one-page written correspondence (containing the forwarding address) on the Landlord's house, both on August 17, 2024. The Landlord did not dispute these facts.

The Tenants seek the return of their $1,600.00 security deposit.

The Landlords seek $203.86 for unpaid hydro and gas from April to the end of June. The Landlords explain on their application that “This includes 50% of the Hydro and Fortis bill from Apr to June (shared with another tenant in downstairs), which is $174.9 and their part of the last 15 days of Fortis/Hydro in June which is $28.96.”

In addition, the Landlords seek $8,000.00 for loss of rent resulting from the early ending of the tenancy. The Landlords explain on their application that “Tenant moved out at the end of June and it cost me 2.5 months to find a new tenant. New tenant moved in on 15th Sep. So the 2.5 months' loss is on them, which is $8000 in total. Please see attached evidence which is the new tenancy agreement indicated date of start is 15th Sep 2024.”

The Landlord testified that he did not agree to any mutual agreement to end the tenancy. The Landlord further testified that he started looking for a new tenant immediately and listed the property on multiple websites. He listed the property for $3,500, and eventually found a new tenant who began their tenancy on September 15, 2024, at rent of $3,400.00.

Analysis

Tenants’ Claim for Return of Security Deposit

Section 38(1) of the Act states that

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the evidence persuades me to find, on a balance of probabilities, that the Landlord received the Tenants’ forwarding address on or about August 17, 2024.

The Landlord did not dispute this. The Landlord neither repaid the security deposit nor filed an application for dispute resolution claiming against the security deposit, within 15 days of August 17, 2024. Rather, the Landlord did not file his application until October 18, 2024. Last, the Tenants did not at any point agree in writing that the Landlord could keep the security deposit, as would be required under subsection 38(4)(a) of the Act.

Applying the law to the facts, then, it is my finding that the Tenants are entitled to the return of their security deposit, plus interest. This amount is calculated as follows.

The Landlord received the $1,600.00 security deposit on February 15, 2024, and is ordered to return this amount as of January 3, 2025. The Landlord must also repay the Tenants interest on the security deposit in the amount is $38.01 (see section 4, 'Interest payable on security deposits and pet damage deposits' of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003).

Section 38(6) of the Act states that

> If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

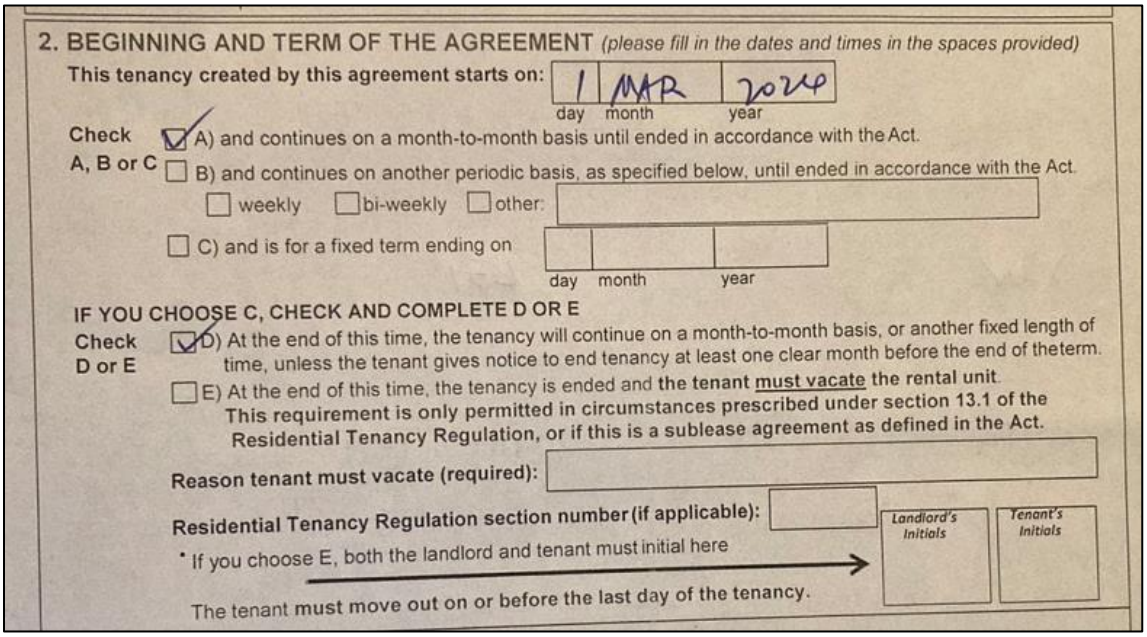
In applying the law to the facts, the evidence leads me to further find, on a balance of probabilities, that the Landlord did not comply with subsection 38(1) of the Act. They neither returned the deposit, nor did they file an application with the Residential Tenancy Branch within 15 days of having received the Tenants' forwarding address.

Therefore, the Landlord must pay the Tenants double the amount of the security deposit plus interest for a total of $3,238.01.

Landlord's Claim for Unpaid Utilities, Loss of Rent, and Application Fee

The Landlord claims compensation in the amount of $203.86 for unpaid gas and hydro. The Landlord testified about these amounts owing and provided documentary evidence to support his claims. The Tenants and their advocate did not dispute this aspect of the Landlord's claims. Therefore, the Landlord is entitled to his claim of $203.86 for unpaid gas and hydro.

Regarding the loss of rent, this is where the tenancy agreement plays an important role. The copy of the tenancy agreement submitted into evidence by the Tenants includes this relevant section on page 2:



2. BEGINNING AND TERM OF THE AGREEMENT *(please fill in the dates and times in the spaces provided)*

This tenancy created by this agreement starts on: 1 (day) MAR (month) 2024 (year)

Check A, B or C

☑ A) and continues on a month-to-month basis until ended in accordance with the Act.

☐ B) and continues on another periodic basis, as specified below, until ended in accordance with the Act.

☐ weekly ☐ bi-weekly ☐ other:

☐ C) and is for a fixed term ending on (day) (month) (year)

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check D or E

☑ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

☐ E) At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.**
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required):

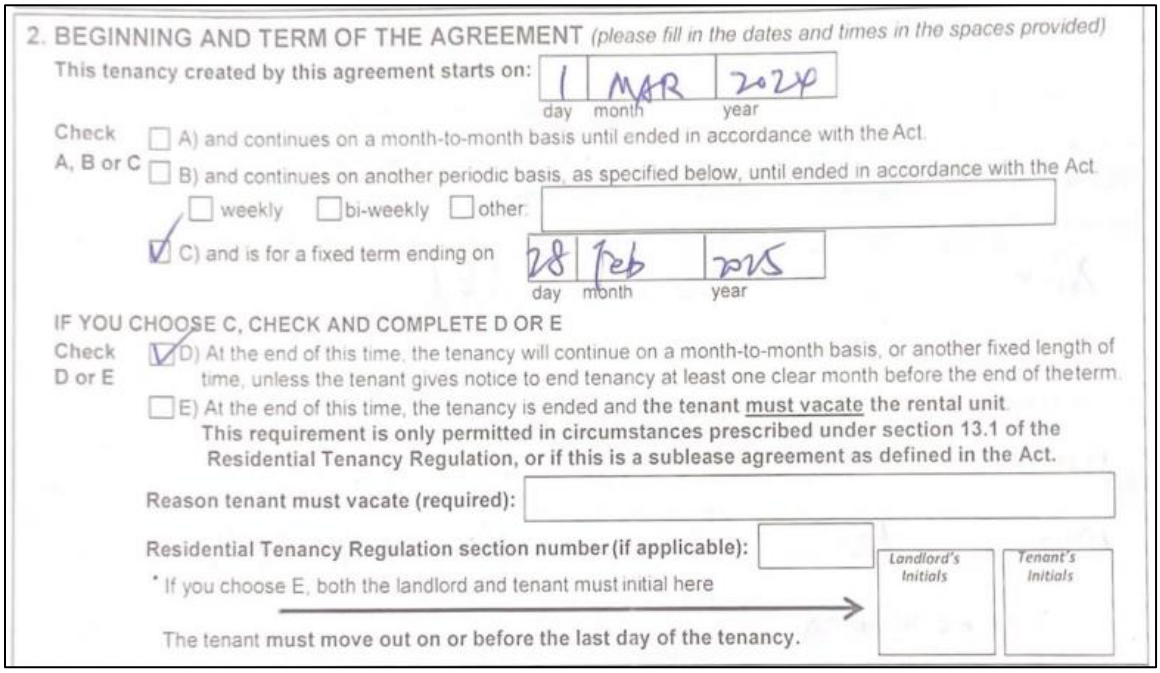
Residential Tenancy Regulation section number (if applicable):

* If you choose E, both the landlord and tenant must initial here

Landlord's Initials | Tenant's Initials

The tenant **must move out on or before the last day of the tenancy.**

Whereas the version of the tenancy agreement submitted into evidence by the Landlord appears as follows:



2. BEGINNING AND TERM OF THE AGREEMENT *(please fill in the dates and times in the spaces provided)*

This tenancy created by this agreement starts on: 1 (day) MAR (month) 2024 (year)

Check A, B or C

☐ A) and continues on a month-to-month basis until ended in accordance with the Act.

☐ B) and continues on another periodic basis, as specified below, until ended in accordance with the Act.

☐ weekly ☐ bi-weekly ☐ other:

☑ C) and is for a fixed term ending on 28 (day) Feb (month) 2025 (year)

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check D or E

☑ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

☐ E) At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.**
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required):

Residential Tenancy Regulation section number (if applicable):

* If you choose E, both the landlord and tenant must initial here

Landlord's Initials | Tenant's Initials

The tenant **must move out on or before the last day of the tenancy.**

Both copies of the tenancy agreement are otherwise nearly identical. However, the Landlord's version of the tenancy agreement includes what appears to be signatures of both the Landlord and the two Tenants. The Tenants' version of the tenancy agreement is absent signatures of any party. In the absence of any additional evidence before me, I am inclined to accept the Landlord's version of the tenancy agreement over that of the Tenants.

A tenancy agreement is not fully entered into unless the parties have affixed their signatures to that agreement. Further, the checking of box "D" on the Tenants' version of the agreement is inconsistent with a landlord intending to rent property on a month-to-month basis, and, given the Landlord's experience as a landlord, I find it unlikely that this box was checked if the tenancy had been a periodic tenancy.

Last, the visual appearance of the Landlord's version of the tenancy agreement reflects age and a slightly worn nature, supporting, at least to some degree, that the Landlord's version is the original and therefore correct version of the tenancy agreement.

Based on this finding, then, my finding of fact is that the tenancy was a fixed-term tenancy. The Tenants, by giving notice on June 17, 2024, to end the fixed-term tenancy early and effective June 30, 2024, is in breach of section 45(2) of the Act. The Tenants had the right to end the tenancy, but not before February 25, 2025.

Further, I do not find that the Landlord's wife's response of "OK" in the WeChat conversation of June 4, 2024, is tantamount to a mutual agreement to end the tenancy (which is a permitted method of ending a tenancy under section 44(1)(c) of the Act). Rather, it is to me nothing more than an acknowledgement—but not an implicit or explicit agreement—that the Landlord's wife received the Tenant's notice to end the tenancy. Nor is there any additional evidence submitted by the Tenants to establish that there ever existed a mutual agreement to end the tenancy.

As an aside, while the Tenants provided testimony and submissions regarding various issues they encountered with the rental unit during the tenancy, there is no evidence that the tenancy was ended under subsection 45(3) of the Act.

Section 7 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 party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Based on the facts of this dispute, it is my finding that the Tenants breached the Act (section 45(2)) and the tenancy agreement by ending the tenancy early. Second, the Landlord has proven that they suffered a monetary loss because of this breach. Further, the Landlord has proven the amount of the loss in the amount of two-and-a-half-month's rent of $8,000.00. Fourth, and last, based on the undisputed evidence of the Landlord, it is my finding that the Landlord took reasonable steps to minimize their loss: they relisted the property immediately after they received the Tenants' keys, they listed in on multiple websites, and they listed for close to the rent that the Tenants had been paying.

However, on this last point, the Landlord listed the rental unit at $3,500.00, which is 9.375% more than the amount of rent during this brief tenancy. Listing the rental unit at $3,500, instead of $3,200, would, I find, have an impact—though perhaps immeasurable—on the Landlord's ability to attract a new tenant. Indeed, there is no evidence that the Landlord reduced the listed amount of the rent from $3,500.00 back down to $3,200. For this reason, while I do find that the Landlord is entitled to compensation for his loss of rent, the amount awarded is reduced by 9.375%.

Taking into careful consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving his claim for compensation for loss of rent. Pursuant to section 67 of the Act the Landlord is awarded $7,250.00.

Pursuant to section 72 the Landlord is awarded $100 to pay for his application fee.

Summary

The Landlord is awarded $7,553.86. The Tenants are awarded $3,238.01.

The Tenants' award is offset from the amount the Landlord is awarded, leaving a balance owing by the Tenants to the Landlord in the amount of $4,315.85.

A monetary order in this amount is issued with this decision to the Landlord, who must serve a copy of that order upon the Tenants. If necessary, the Landlord may file and enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

Both applications are granted. Both parties are awarded compensation. However, the amount awarded to the Tenants is deducted from the amount awarded to the Landlord, who is granted a monetary order in the amount of $4,315.85.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 3, 2025

Residential Tenancy Branch