Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNSDS-DR, FFT / MNRL-S, LRSD, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

In their Application, which was filed on February 3, 2025 the Tenant seeks:

- An order for the Landlords to return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlords under section 72 of the Act.

In their Application, which was filed on February 11, 2025 the Landlords seek:

- A Monetary Order for unpaid rent under section 26 of the Act;
- Authorization to retain the Tenant's security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Tenant under section 72 of the Act.

Parties appeared for both the Landlords and the Tenant. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Tenant's Application

The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package (Materials) and the Tenant's evidence. No issues with service were raised. Given this, I find that these records were served as required under sections 88 and 89 of the Act.

The Landlords' Application

The Landlord testified they served their Application Materials and their evidence to the Tenant via email on February 14, 2025. The Tenant provided their email address for service on the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit on the approved Residential Tenancy Branch form given to the Landlords.

The Landlords also made a request for substituted service, seeking authorization to serve the Tenant via email. In a decision dated February 14, 2025, the Landlords' request was approved. The Landlords submitted copies of the email correspondence containing the Materials and evidence sent to the Tenant.

The Tenant stated they had not rescinded their consent to be served at the email address given the Landlords, but testified they had not received the Materials and evidence of the Landlord as they had since blocked the Landlords' email addresses.

Based on the above, I find the Landlords were entitled to rely on the email address used to serve the Tenant, given it was both explicitly provided for service by the Tenant, and they were permitted to serve the Tenant in this manner, per their substitute service request. I find the Tenant blocking the Landlords' email addresses resulted in a situation of their own making and that to find the Landlords' service was defective would be prejudicial to them because of this. Therefore, under section 71 of the Act I find the Landlords' Materials and evidence was served to the Tenants in accordance with the Act.

Issues to be Decided

- Is the Tenant entitled to the return of their security deposit?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to retain the Tenant's security deposit?
- Are ether party entitled to recover the filing fees for their respective Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on September 1, 2023 for a fixed term ending August 31, 2024.
- Rent was $2,000.00 per month due on the first day of the month.
- A security deposit of $1000.00 was paid by the Tenant on August 20, 2023 which the Landlords still hold.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant vacated the rental unit at the end of December 2023 – precise date unknown by either party – and the Tenant gave the keys to the rental unit back to the Landlords on December 31, 2023.
- The rental unit is one bedroom in a three-bedroom apartment in Vancouver. The other two rooms in the residential property were rented to other tenants of the Landlords.

The Tenant's claim

The Tenant provided their forwarding address to the Landlord via email on January 3, 2024. In the same correspondence, they asked for the return of the security deposit. The email addresses used by the Tenant were those given for service by the Landlords

on the tenancy agreement. The Landlords replied to the Tenant on January 5, 2024, and stated they would not send the deposit back.

The Tenant requests the return of double their security deposit, plus interest, taking the position the Landlords have not complied with the 15-day timeframe to either return the deposit or claim against it.

The Tenant testified they had previously submitted a claim where they sought the same remedy as they do in this Application, but as this coincided with a period of exams, they missed the window to serve the Materials and opted to withdraw the application instead.

The Landlord acknowledged receiving the Tenant's forwarding address in writing, that they replied to the email and told the Tenant they would not return the deposit to them as the Tenant had breached the terms of the 1-year lease. The Landlord acknowledged they did not have authority from the Tenant to retain the deposit, and that they had not made any applications seeking authorization to keep the deposit prior to their current Application, filed February 11, 2025.

The Landlord took the position the Tenant had abandoned the rental unit and that they had to wait until the date the 1-year tenancy would have run to in order to accurately calculate their loss. Further, they viewed the Tenant's withdrawal of their previous application as an indication the Tenant surrendered their deposit.

The parties agreed there were no inspections of the rental unit or condition inspection reports prepared at either the start or the end of the tenancy.

The Landlords' claim

The Landlords take the position they entered into a 1-year tenancy, which the Tenant breached by ending the agreement after only four months. There were no issues with rent payments for September to December 2023, but the Tenant paid no rent from January 2024 onwards, by which time they had vacated the rental unit.

The Landlord said the Tenant advised them on November 15, 2023 that they would be leaving the rental unit. Both parties tried to find a new tenant, but they were unable to do so. The Landlord indicated they found tenants to rent the rental unit on a short-term basis sporadically between March and August 2024 and that it was hard to find new

tenants in the middle of the academic year, given their usual tenants are students at a close by university.

Per their Monetary Order Worksheet, the Landlords claim the following losses:

Month	**Amount of lost rent**
January 2024	$2,000.00
February 2024	$2,000.00
March 2024	$1,000.00
April 2024	$1,000.00
May 2024	$1,000.00
June 2024	$800.00
July 2024	$800.00
August 2024	$800.00
Total	**$9,400.00**

In response, the Tenant testified they actively looked for new tenants by posting on multiple online platforms and did not find any record of the Landlords' attempts to do the same. They indicated their doubt as to whether the Landlords had indeed advertised for new tenants as they claimed.

The Tenant indicated their belief that the attempts to find a new tenant were hampered by restrictive rules put in place by the Landlord, namely, that the new tenant must be a female international student and that no male guests were allowed in the rental unit.

The Tenant referred me to their email of November 15, 2023 and the Landlords' reply. They stated they ended the tenancy because in their view, the Landlords had breached material terms of the tenancy agreement by altering the rental unit by putting up a wall in the communal area, by accessing the property without notice and by restricting their right to have guests.

In response to the Tenant's submissions, the Landlord testified they posted the rental unit on Facebook, but did not keep records of this and the post is now unavailable. They said that as the two other tenants occupying the residential property were female, the rule they put in place regarding male guests was for the comfort and protection of all occupants. The Landlord said the Tenant was still permitted to host male guests in the lobby of the building if they wished, but not in the rental unit or the communal area of the apartment.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states 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.

Is the Tenant entitled to the return of their security deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Sections 24 and 36 of the Act also states that a tenant may extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given two opportunities to do so, unless the tenant has abandoned the rental unit.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

It was undisputed by the parties that the Tenant provided their forwarding address in writing to the Landlords by email, to email addresses given for service, on January 3, 2024. The Landlords are seen to acknowledge receipt and reply on January 5.

I find the tenancy ended on December 31, 2023 when the Tenant vacated the rental unit and provided the keys back to the Landlords. Though the Landlords took the position the Tenant abandoned the rental unit, I find this was not the case. The evidence indicates the parties were in contact regularly both during and after the Tenant's occupancy of the rental unit which is not at all consistent with abandonment of the rental unit. Given this, the Tenant has not extinguished their right to the return of their security deposit.

The above findings mean the Landlords would have had to return the security deposit to the Tenant, seek their authorization to retain it, or submit a claim requesting authorization to retain it by January 20, 2024 to be compliant with section 38(1) of the Act. As already outlined in this Decision, the Landlords did not have the Tenant's permission to keep the deposit and submitted their Application where they request to retain the deposit on February 11, 2025 – well over a year past the statutory deadline.

I do not accept the Landlords' position that they would be allowed until 15 days after the tenancy was set to run to – August 31, 2024 – to submit their Application. Even if this were accepted, they have still missed the deadline by a considerable amount.

I also do not find merit in the Landlord's argument that the Tenant's withdrawal of a previous claim seeking the return of their deposit can be viewed as a waiver of their right to the return of the deposit, or authorization for the Landlords to keep it.

I also find the Tenant has not extinguished their right to the return of the deposit by failing to attend inspections of the rental unit under sections 24 and 36 of the Act since the Landlords did not give them the opportunity to attend any inspections.

Given the above, I find the Landlords have failed to comply with section 38(1) of the Act and I grant the Tenant's Application. Therefore, I order the Landlords to return double the security deposit, plus interest to the Tenant per section 38(6) of the Act.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Though the Tenant is entitled to the return of double their security deposit, the Landlords may still be successful in their application for unpaid rent and any monetary award in their favour would be set off against double the deposit.

The Landlords argued the Tenant breached the fixed term tenancy, ending it after only four months when it was set to run for a year, and seek compensation of $9,400.00 in lost rent accordingly.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. It was undisputed by the parties that the Tenant paid rent when it was due for the first four months of the tenancy, though vacated the rental unit on December 31, 2023, and rent for the last eight months of the fixed-term

went unpaid. The Tenant stated they ended the tenancy early because the Landlords breached material terms of the agreement.

Fixed-term tenancies can be ended by a tenant before the end of the term is reached, but only in certain circumstances. One of these circumstances is if the landlord has breached a material term of the tenancy agreement. In this context, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice, as set out in section 45(3) of the Act.

A material term is one so important that the most trivial breach of that term gives the other party the right to end the agreement, as confirmed in Policy Guideline 8 - *Unconscionable and Material Terms*. The Policy Guideline also confirms that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply referring to a term as a material term does not make it one.

I find the Tenant's letter of November 15, 2023 references section 45(3) of the Act specifically and outlines, from their view, three material breaches of the tenancy agreement on the Landlords' part. These breaches relate to entry of the rental unit, alterations to the property, and the imposition of rules restricting guests.

I find insufficient evidence to support the notion the first two issues are breaches of material terms. The entry appears to be related to the common area of the residential property, not the rental unit itself, so strictly speaking, notice is not required. The alterations proposed by the Landlord do not appear to be significant and involve putting in a bookcase and a desk, and I find would not amount to a breach of a material term.

However, I find the Tenant has established the Landlords' imposition of rules purporting to restrict all male guests from the rental unit and the apartment as a whole is a breach of a material term. As set out in schedule 9 of standard terms in the *Residential Tenancy Regulation* (the Regulation), the landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. This is also a term of the tenancy agreement, as set out at paragraph 11.

I find that a blanket ban on guests of the male gender is not reasonable, under the circumstances. Allowing male guests in the lobby of the building does not diminish the

impact of the rule. The Tenant outlines in their November 15 letter the rule causing emotional distress, which I find is entirely foreseeable, given they were entitled to rely on the notion the Landlords would not be restricting guests, per paragraph 11 of the tenancy agreement.

I found no evidence to indicate any guests in the residential property displayed behaviour that would warrant banning them outright, let alone all guests of the same gender. I find this ban is a breach of the Tenant's right to have guests, and of paragraph 11 of the tenancy agreement which I find is a material term.

I also find that after the Tenant's November 15 letter, the Landlords reply and do not appear at all willing to revise their stance on the rule banning all male guests so there is clearly no inclination to correct the breach and for the tenancy to continue. Had the Landlords removed the guest restrictions, the Tenant would not have grounds to end the tenancy for a material breach on the Landlords' part.

Based on the above findings, I find the Tenant was entitled to end this fixed term tenancy early under section 45(3) of the Act. The effective of December 31, 2023 is also reasonable in my view, given notice was provided on November 15. The Landlords therefore have no claim for unpaid rent after this date and their claim is dismissed without leave to reapply.

For completeness, I also note my findings that even if the Tenant did not have valid grounds to end the tenancy under section 45(3) of the Act, and so ended the fixed term tenancy in breach of the Act, the Landlords' claim was still without sufficient merit.

The Landlords were also required to mitigate their loss, as set out in section 7(2) of the Act. Parties are not permitted to allow a loss to happen without reasonable intervention then claim the loss from the breaching party. I found insufficient evidence to indicate any steps, let alone adequate ones were taken to source a new tenant to mitigate the loss from the Landlords' side.

Reasonable steps may have included advertising the rental unit as soon as possible, and even for a reduced rent to try and find a new tenant. I found the Landlords' evidence on this issue severely lacking and the Landlord's testimony provided during the hearing to be vague and to carry little weight.

I also find merit in the Tenant's argument that the restrictive guest rules and selective criteria for any new tenant imposed by the Landlords would have been a significant barrier in recovering any loss of rental income.

The purported loss claimed was also not supported by compelling evidence. Whilst it was said the Landlords were able to generate some rental income and recoup some loss by finding short-term tenants, there was no written evidence to support this and lend credibility to the amount claimed was a loss that was actually incurred.

Are the Landlords entitled to retain the Tenant's security deposit?

As the Landlords' claim against the Tenant was unsuccessful, there is no monetary award to be set off against double the security deposit. Therefore, the Landlords are not authorized to retain any of the Tenant's security deposit. I order the Landlords must return double the deposit, plus interest to the Tenant. The Tenant is issued a Monetary Order accordingly.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as $37.17 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

Are ether party entitled to recover the filing fees for their respective Applications?

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the $100.00 filing fee under section 72 of the Act. As the Landlords were not successful in their Application, they must bear the cost of the filing fee.

Conclusion

The Tenant's Application is granted. The Landlords' Application is dismissed without leave to reapply

The Tenant is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlords. It is the Tenant's obligation to serve the Monetary Order on the Landlords. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Return of double security deposit, plus interest	$2,037.17
Filing fee	$100.00
Total	**$2,137.17**

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: April 14, 2025

Residential Tenancy Branch