



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlords' application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 1, 2022, and was to end on January 31, 2023. Monthly rent was set at \$3,600.00, payable on the first of the month. The landlords still hold a security deposit of \$1,800.00 for this tenancy. The tenants provided their forwarding address on June 21, 2022, and the landlords filed this application on July 4, 2022.

The landlord testified that the tenants had only paid \$1,200.00 for the June 2022 rent, and served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on June 6, 2022. The landlord testified that instead of paying the rest of the June rent, the tenants moved out around midnight on June 18, 2022. The landlords submit that they were unable to re-rent the rental unit until August 2022, and lost the remaining rent for June 2022 due to the tenants' failure to comply with the tenancy agreement.

The landlords are also seeking additional losses associated with the end of the tenancy as set out in the table below:

Unpaid Rent Owed for June 1-18, 2022 (\$3,600.00/30 days *18 days -\$1,200.00 paid)	\$960.00
Loss of rent for remainder of June 2022	1,440.00
Recovery of fee paid to Agent hired to attend move-out inspection	100.00
Recovery of Filing Fee	100.00
Total Monetary Award Requested	\$3,000.00

The landlord testified that they had to hire an agent to attend the move-out inspection on as they were ill, and that their brother was out of the country.

The tenants are not disputing that they had only paid \$1,200.00 for June 2022. The tenants submit that they moved out by the effective date of the 10 Day Notice. The tenants are disputing the landlords' claim for lost rent as they were informed by text

message on June 7, 2022 that the landlords had found a new tenant, but on June 13, 2022 the landlords had decided to not select that tenant. The tenants testified that they had moved out in accordance with the 10 Day Notice, and was promised the return of their security deposit. The tenants believed that everything was fine.

The landlord responded that they did everything to mitigate their losses and find a new tenant. The landlord testified that they had performed a background check on the prospective tenant, and realized that the prospective tenant was not suitable due to a bad credit score, and problems with the previous landlord. The landlord testified that they had to mitigate their future losses by screening and selecting the right tenant.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

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

Section 5(1) of the Regulation states that:

The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

While the tenants did move out by the effective date of the 10 Day Notice, the tenants are still obligated to pay the monthly rent as stipulated in the tenancy agreement. The issuance of a 10 Day Notice to End Tenancy does not relieve the tenants from their obligation to pay the outstanding rent, or their obligation to remain in the tenancy until the end of the fixed-term term. In this case, the tenants failed to pay the outstanding rent for June 2022, which is a breach of the tenancy agreement and *Act*. In this case, the tenants are not only responsible for paying the monthly rent in full on the first of every month, but they are also obligated to continue with the tenancy until the end of the

fixed term. I am not satisfied that the tenants had permission to end the fixed term early, or deduct any rent.

In assessing whether the landlords are entitled to their monetary claim, I must still consider whether the landlords had mitigated the losses claimed. In this case, I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the fixed term, as is required by section 7(2) of the *Act*. I am satisfied that the landlords had made efforts to fill the vacancy as soon as possible. Although the landlords have an obligation to mitigate the tenants' exposure to their losses, this obligation is balanced with the landlords' right to screen prospective tenants, and fill the vacancy with a suitable tenant. I find that the landlords had provided a reasonable explanation for why they had decided to not select the prospective tenant in June 2022. I am satisfied that the tenants not only owe \$960.00 in outstanding rent for the remaining period that they occupied the rental unit, but that they owe the landlords \$1,440.00 in lost rental income for the remainder of the month.

The landlords also filed a monetary claim in the amount of \$100.00 for the agent that they hired to attend the move-out inspection. I find that this loss is due to a business decision made by the landlords, and is not directly due to the tenants' failure to comply with the *Act* and tenancy agreement. As noted above, the landlords have a duty to mitigate the losses claimed. I therefore dismiss this portion of the landlords' claim without leave to reapply.

As the landlords' application had merit, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

The landlords continue to hold the tenants' security deposit. I note that although the tenants stated that they had the right to the return of their security deposit, pursuant to section 38 of the *Act*, a landlord must do the following:

Return of security deposit and pet damage deposit

38 (1) 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 case, the landlords had filed their application within the required 15 days. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$10.40 is payable as interest on the tenant's security deposit from January 30, 2022 when the deposit was originally paid, until the date of this decision, April 18, 2023.

Conclusion

I issue a Monetary Order in the amount of \$689.60 in the landlords' favour as set out in the table below.

Unpaid Rent Owed for June 1-18, 2022 (\$3,600.00/30 days *18 days -\$1,200.00 paid)	\$960.00
Loss of rent for remainder of June 2022	1,440.00
Recovery of Filing Fee	100.00
Less Security Deposit Held plus applicable interest	-1,810.40
Total Monetary Award	\$689.60

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the landlords' application without leave to reapply.

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: April 18, 2023