

## **DECISION**

### **Introduction**

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act;
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord requested:

- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

S.L. appeared for the Landlord. R.U. appeared for the Tenants.

### **Service of Applications and Evidence**

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both parties duly served with the Applications and evidentiary materials.

### **Preliminary Issue**

Both parties confirmed that the tenancy has come to an end. As the tenancy is over, I find that the non-monetary portions of the Tenants' application moot, and I exercise my authority under section 62(4)(b) of the *Act* to dismiss the tenants' non monetary claims, without leave to reapply

The Landlord testified that they were able to re-rent the rental unit, and were therefore reducing their monetary claim for lost rental income for the month of August 2025 from \$2,000.00 to \$903.23. The Landlord's monetary claim was amended as requested.

### **Issue(s) to be Decided**

Is the Landlord entitled to a monetary award for unpaid rent and monetary losses arising out of this tenancy?

Are the Tenants entitled to the return of their security deposit?

Is the Landlord entitled to recover the filing fee?

### **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 both applications before me, and my findings around it are set out below.

This fixed term tenancy began on October 1, 2024, and was to end on September 30, 2025. Monthly rent was set at \$2,000.00, payable on the first day of the month. The Landlord holds a security deposit of \$1,000.00 for this tenancy. The Tenants moved out on or about July 29, 2025.

The Landlord testified that the Tenants ended this tenancy before the end of the fixed term as required under the Act. The Landlord filed an application requesting \$903.23 in lost rental income for August 2025 as well as \$1,000.00 in liquidated damages as stipulated in the tenancy agreement.

The Tenants filed an application requesting that the Landlord return their security deposit in full. The Tenants dispute the Landlord's monetary claims as they feel that they had the right to end the tenancy pursuant to section 45(3) of the Act by giving notice to the Landlord that they have failed to comply with a material term of the tenancy agreement, and the Landlord failed to correct the situation within a reasonable period after the written notice was given. The Tenants submitted a copy of a letter they had sent the Landlord, dated July 9, 2025, outlining the issues that have not been resolved. The following was included in the letter to the Landlord:

We have been living here for 9 months, and despite previous attempts to address them, the following problems continue:

1. **Roaches:** We still have a bad roach problem. Even though an exterminator has been sent, the issue has not been resolved, and the roaches remain.
2. **Smoke Smell:** There is a constant and strong smell of marijuana and cigarette smoke entering our unit from the hallway. This persistent odor is affecting our living environment and is a health concern, especially for my children.
3. **Maggot Found:** Recently, I found a maggot in our bathroom. This is a concern regarding the cleanliness and safety of the living space, very serious health concern.
4. **Clogged Toilet:** Our toilet gets clogged very easily and often.

I have sent two emails about these first two issues before dated **October 28, 2024 and January 06, 2025**, but I have not received a reply. The exterminator visits have not solved the roach problem. And a furthered email yesterday July 08, 2025.

The Tenants felt that the home was unsafe due to the referenced issues, and although they had wanted to stay longer, they felt that they had no choice but to move out.

The Tenants testified that the Landlord failed to acknowledge the breaches despite the letter, and the Tenants felt that they had no choice but to exercise their right to end the fixed term tenancy early. The Tenants informed the Landlord on July 21, 2025, that they were moving out, and moved out on July 29, 2025.

The Landlord responded that the Tenants did not have the right to end the fixed term tenancy pursuant to section 45(3) of the Act as there was no breach of a material term of the tenancy agreement.

The Landlord testified that they had responded to the Tenants' concerns about the infestations and had sent professional pest control to the rental unit on multiple occasions, in October, November, and December 2024, as well as July 2025, as supported by the invoices submitted in evidence. The Landlord noted that following receipt of the letter dated July 21, 2025, they had sent the pest control company the next date to inspect and service the rental unit again.

The Landlord testified that they had investigated the clogged toilet and smoke issue, and dispute that these issues justified the early termination of the tenancy. The Landlord argued that the smoke did not original from inside the building as it was non-smoking building, and may be due to the factors beyond the Landlord's control such as parties smoking near the building. The Landlord testified that they had personally spoken to these parties, and had informed them that they could not smoke near the building.

The Landlord disputed that the toilet was frequently clogged, and argued that they would respond in a timely manner to address the tenants' concerns. The Landlord submitted a copy of a text message dated January 23, 2025 from the Tenants, thanking the Landlord for "getting the bathtub drain unclogged so quickly". The Landlord also

submitted a text message dated October 8, 2024 from the Tenants about a clog in the kitchen sink, to which the Landlord had responded to immediately.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

### **Is the Landlord entitled to a Monetary Order for unpaid rent, monetary loss, or lost rental income?**

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45 (2)** *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

*3) 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.*

*(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

In this case, I find that the tenants failed to end the fixed term tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the Tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy.

I note that the tenants may end a tenancy pursuant to section 45(3) of the *Act*, for a material breach of the tenancy agreement, but in this case I find the reasons provided by the Tenants did not justify the termination of this fixed term tenancy under this section.

As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely

possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

Although I find that the Tenants may have had valid concerns, I am not satisfied that they had established that the Landlord had breached any material term of the tenancy agreement.

I find that the Landlord had provided sufficient evidence that they had diligently responded to the Tenant's concerns as supported by the invoices and text messages in evidence. I find that the Landlord had provided several pest control invoices, which support that they had made significant effort to deal with any pest issues in the rental unit.

Although I sympathize with the Tenants and the fact that they had suffered greatly during this tenancy, pests such as cockroaches and insects can be a problem in many residential properties, and difficult to treat and eradicate. I find that the Landlord had responded promptly and on multiple occasions in an effort to deal with this issue, and the Tenants did not have sufficient justification for ending this tenancy for the Landlord's failure to address these issues.

I have also considered the other concerns such as the Tenants' complaints about smoking, odours, and clogged plumbing. I find that the Landlord had provided sufficient evidence to show that they had attempted to address the Tenants' complaints in a timely and satisfactory manner, as supported by the Tenant's response to the Landlord confirming their satisfaction. Furthermore, as the Landlord had pointed out, the building is a non-smoking one, and the odour and smoke could have originated from sources and areas beyond the control of the Landlord.

Although I have no doubts that the Tenants may have experienced a significant reduction in their ability to enjoy their home due to smoke and odours that have seeped into their rental unit, as this is a multi-tenanted building, I find that the Landlord is faced with the difficult challenge of identifying which specific unit or Tenant the smoke is

coming from, especially in this case where a tenant may vehemently deny smoking inside of their rental unit.

I am not satisfied that the Landlord had failed to comply with a material term of the tenancy agreement. I find that the landlord did take steps to address the tenants' complaints and concerns in a timely manner and as required by the Act. For these reasons, I find that the Tenants have failed to establish that the right to terminate this fixed term tenancy under section 45(3) of the Act.

The evidence is clear that the Tenants failed to end this fixed term tenancy in a manner required under sections 44 and 45 of the Act.

I find that the landlord had provided detailed evidence to support their efforts to mitigate the tenants' exposure to losses associated with the early termination of this tenancy, and as a result was able to fill the vacancy for August 15, 2025. Accordingly, I allow the Landlord's monetary claim for lost rental income for the period of August 1, 2025 to August 14, 2025 in the amount of \$903.23 due to the Tenants' failure to end this tenancy in a manner that complies with the Act.

I must now consider whether the landlord is entitled to any liquidated damages as set out in the tenancy agreement.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

*There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:*

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

*If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally*

*clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...*

The amount claimed in an agreement as liquidated damages is intended to be an estimate of the loss that may be suffered by the landlord if the tenant breaches the agreement by ending the tenancy early.

I find that the landlord is entitled to liquidated damages, as set out in the tenancy agreement, and as agreed to by both parties when signing the tenancy agreement. I do so as I accept the amount is a pre-estimate of the losses associated with the early termination of this fixed-term tenancy. I find this to be a reasonable estimate of the landlord's loss in the event of a breach to cover costs, such as the time and cost associated with advertising, interviewing, screening, and re-renting of the rental unit due to the early termination of this tenancy.

Therefore, I find the Landlord is entitled to a Monetary Order under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,000.00.

As the Landlord was successful in their application, I allow the Landlord to recover the filing fee from the Tenants.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' security deposit, plus interest, in partial satisfaction of the monetary awards granted.

## Conclusion

I dismiss the Tenants' claims, without leave to reapply.

I allow the Landlord's monetary claims as set out in the table below. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards.

Loss of Rental Income for August 1-14, 2025	\$903.23
Liquidated Damages	1,000.00
Recovery of Filing Fee	100.00
Less Deposit Held by Landlord, plus interest	- 1013.76
<b>Total Monetary Order</b>	<b>\$ 989.47</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with a copy of this Order as soon as possible. Should the Tenants 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.

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: September 25, 2025

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Residential Tenancy Branch