



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE PROPERTY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for unpaid rent or utilities, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlord agent EQ ("agent") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Both parties confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find that both parties were sufficiently served under the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2019 and was scheduled to end on January 31, 2020. Monthly rent during the tenancy was \$3,875.00 per month and was due on the first day of each month.

The landlord's monetary claim of \$4,675.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid February 2019 rent	\$3,875.00
2. Liquidated damages	\$800.00
3. TOTAL	\$4,675.00

Regarding item 1, the landlord has claimed \$3,875.00 due to the tenants' signing a fixed term tenancy and later deciding not to move into the rental unit and failing to pay the first months' rent.

Both parties signed the tenancy agreement on January 5, 2019. The tenants claim that they were just doing their due diligence and referred to many texts submitted in evidence. Most of the texts were after the date the tenants signed the tenancy agreement. The agent testified that it is standard practice to do your due diligence before entering into a contract and the agent stated that their tenant's response was an excuse to not moving into the rental unit.

In the texts submitted in evidence the tenants apologize to the agent for all the questions but that they usually can look up who the landlord is without having to do a land title search, which will cost them money and eventually request the property management agreement. The agent stated that they do not share the details of their property management agreements as tenants are not entitled to that information as it contains financial information between the parties and is a private services contract. The tenants also submit a Land Title Search dated January 9, 2019, which is five days after the tenants signed the tenancy agreement.

Regarding item 2, the landlord is seeking \$800.00 as the cost of liquidated damages as set out in the signed addendum to the tenancy agreement signed by both parties. The liquidated damages clause states:

If the tenants ends the fixed-term tenancy before the end of the original term as set out in the original BC Residential Agreement, the tenant will pay the sum of \$800.00 to the Landlord as liquidated damages, and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's cost of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property. The tenant is responsible for all rental payments until the property is re-rented.

The parties confirmed that the tenants have not paid the first month's rent or the liquidated damages as of the date of the hearing.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - The landlord has claimed \$3,875.00 due to the tenants' breaching a fixed term tenancy, which according to the signed tenancy agreement was signed by the parties on January 5, 2019. Section 16 of the *Act* applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

[Emphasis added]

Based on the above, I find that by signing the tenancy agreement on January 5, 2019, the obligations of the tenancy agreement apply to this tenancy. In addition, section 45(2) of the *Act* applies and states:

Tenant's notice

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.

[Emphasis added]

Based on the above, I find the tenants breached section 45(2)(b) of the *Act* by making a decision not to move into the rental unit and failing to pay the first month's rent thereby ending the fixed term tenancy contrary to section 45(2) of the *Act*. I find the earliest the tenants could legally end the tenancy would have been January 31, 2020. I find the tenants failed to exercise reasonable due diligence before signing the tenancy agreement, which is a legal contract between the parties. Accordingly, I find the landlord has met the burden of proof and that I grant the landlord **\$3,875.00** for unpaid February 2019 rent.

Item 2 - The landlord is seeking \$800.00 as the cost of liquidated damages as set out in the liquidated damages clause on the addendum to the tenancy agreement, which both parties signed. I find that due to the tenants breaching the fixed term tenancy, that the tenants are responsible to pay the \$800.00 amount agreed upon in writing prior to signing the tenancy agreement and addendum on January 5, 2019. I grant the landlord the full amount of **\$800.00** as claimed for item 2 as a result as I find the landlord has met the burden of proof.

As the landlord's application was successful, I grant the landlord **\$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim of **\$4,775.00** comprised of \$3,875.00 for item 1, \$800.00 for item 2, plus the \$100.00 filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$4,775.00**.

I caution the tenants not to breach section 45(2) of the *Act* in the future.

Conclusion

The landlord's claim is successful.

The landlord has established a total monetary claim of \$4,775.00. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$4,775.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 22, 2019

Residential Tenancy Branch