



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

KE attended as agent for the landlord. The tenants attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The landlord provided the following uncontradicted testimony. The 18-month fixed term tenancy began on January 1, 2018 for monthly rent of \$8,000.00 payable on the first of the month with an anticipated end date of June 30, 2020. The tenants provided a security deposit of \$4,000.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The tenants testified that on February 03, 2020 they informed the landlord that they had purchased a home and wanted to move out before the end of the fixed term. The tenants asked to be released from the agreement on March 31, 2020, three months early without penalty. The parties agreed the tenants did not move out and did not pay rent for April 2020.

In support of their request to be released early from the fixed term the tenants asked in the letter that the landlord consider various factors. For example, the tenants asserted that throughout the tenancy they had been paying an "inflated market rent" of \$8,000.00 when the true market rent was "probably closer to \$6,000 to \$6,500.00/month".

The parties agreed that the landlord did *not* agree to release the tenants from the lease. However, the landlord agreed to list the property for rent right away in the hope of locating an acceptable replacement tenant so that the tenants could leave before the end of the fixed term. In a letter of February 13, 2020, a copy of which was submitted, the landlord stated:

Regarding your current fixed term lease, [landlords] are disappointed in the situation, however, are understanding of your position and request to be released from the agreement. This is not ideal for either party. Together we have taken

swift action to list the property in the hopes the property will be rented for an April 1st occupancy. We have no intention of delaying or taking advantage of the situation.

As you know, I have reached out earlier today with a request for showing dates and times, and as of writing, we have two separate parties interested in viewing the property. If we can find a suitable tenant to occupy the home before June, you will be released from your contractual obligations.

[Emphasis added]

The tenants testified the landlord did not make reasonable efforts to locate a replacement tenant; the landlord disagreed and provided evidence of advertisements, the number of inquiries/viewings, the special challenges associated with the State of Emergency and the type of unit, and the eventual lowering of the requested rental amount. The tenants asserted the efforts were “too little, too late”.

In an email of March 25, 2020, the tenants wrote to the landlord as follows:

We are however left feeling disappointed given the significant amount of notice we gave, which was well in advance of any impact of CoVid on the [municipality] housing market. At the time we gave notice, there was a record low 1.1% vacancy rate in [municipality], and we shared numerous times during this period that the advertised rent was far too high and well above market value. With such a low vacancy rate, had the property been priced properly we are confident it would have been leased within this very ample window of time.

The landlord asked the tenants in an email of March 25, 2020 if there “are still planning to vacate the property at the end of the month”. The tenants did not vacate and put a stop payment on the pre-authorized rent payment of \$8,000.00 for April 1, 2019.

The tenants testified they did not pay the rent due April 1, 2020 for many reasons. A key reason was because the historical and ongoing monthly rent was “over market value”; the non-payment of the rent corrected the overpayment to some extent. The tenants also testified that they believed the landlord did not make reasonable efforts to locate a suitable replacement tenant.

On April 6, 2020, the tenants testified they asked the landlord to lower the rent; the landlord declined. The tenants sent a letter to the landlord dated April 17, 2020 setting

out their reasons for wanting reduced rent, such as: anxiety regarding the pandemic, their financial challenges, and their complaints of slow response from the landlord.

In a letter of April 28, 2020, the landlord confirmed the denial of the tenants' request to lower the rent; a copy of the letter was submitted. The letter states in part:

I provided a response to your request to lower your rent on April 6, 2020. There will not be an agreement to change the terms of the existing contract. They [landlord] have offered the option to defer a portion of the rent. As we have not received any written notice to end the tenancy as required under legislation, and you have stayed beyond the oral notice you had provided of March 31, 2020 and have not provided April's rent under the conditions of the agreement, you are in breach of contract.

On May 1, 2020, the tenants emailed the landlord and expressed their frustration with the landlord's failure to market the property adequately before the pandemic and the difficulties of showing the unit, stating:

Timing of a move date has been solely based on being released from our lease by the landlords which we continue to be denied and told we will be held accountable to rent for the full term as a full rate with no concessions, despite everything we have shared and the incredible tenants we have been for 2 years. While we asked for end of February we have also share all along our flexibility to leave immediately IF release from the lease obligations.

In correspondence of May 2, 2020, the tenants explained their decision to pay rent for May 2020 as follows:

From our perspective, this constitutes a 50% rent payment for the month of April and May. We feel that this is an acceptable level of value, and fair expectation for our landlords to have arrived considering our request to terminate in February.

The parties agreed they have subsequently come to a mutual agreement that the tenancy will end two weeks early, on June 15, 2020.

The landlord seeks a monetary order for the outstanding rent of \$8,000.00 and reimbursement of the filing fee.

The tenants request the landlord's application be dismissed without leave to reapply.

Analysis

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the above steps is addressed.

Did the tenants fail to comply with Act, regulations, or tenancy agreement?

Generally speaking, rent must be paid in full and on time.

Section 26(1) states that a tenant must pay rent when it is due under the tenancy

agreement, whether the landlord complies with the Act and the agreement, unless the tenant has a right to deduct all or part of the rent.

The section states:

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 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act; section 45(2) addresses fixed term tenancies.

Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

(1) A tenant may end a periodic 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, and

(b) 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.

*(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].

A fixed term tenancy may be ended by the Notice under section 45(2) above, by a mutual agreement, or by special circumstances which do not apply in this case.

The tenants provided notice of their intention to vacate the unit on March 31, 2020. However, the tenants did not vacate the unit and occupied the unit for the month of April 2020 without paying rent as required under the lease.

Parties may agree to change some terms of an agreement, such as the amount of rent payable. Section 14 of the Act states:

Changes to tenancy agreement

14(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities];

(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

[emphasis added]

Residential Tenancy Policy Guideline 30- Fixed Term Tenancies states how fixed term tenancies end:

C. ENDING A FIXED TERM TENANCY

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).

[emphasis added]

The parties did not agree that the tenants did not have to pay rent for the month of April 2020. Accordingly, rent for April 2020 was payable to the landlord by the tenants.

Thus, I conclude the tenants breached their obligation to pay rent for the month of April 2020 when it became due.

Did the loss or damage result from non-compliance?

Having found that the tenants breached the Act, I must next determine whether the landlord's loss resulted from that breach.

This is known as *cause-in-fact*, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, I find that but for the tenants' failure to pay rent for the month of April 2020 when it was due, that the landlord would not have suffered a loss of rent for that month in the amount of \$8,000.00.

I therefore find the landlord's loss resulted in the tenants' non-compliance with the Act and the agreement.

Has the applicant landlord proven amount or value of damage or loss?

As agreed by the parties, the monthly rent was \$8,000.00 and rent was due for the month of April 2020 under the tenancy agreement.

I find that the landlord has proven the loss of rent for one month of \$8,000.00.

Has the applicant landlord done whatever is reasonable to minimize damage or loss?

As the tenants did not vacate the unit on March 31, 2020, the landlord was under no obligation to minimize damage or loss.

Policy Guideline 5 – Duty to Minimize Loss sets out when the landlord has a duty to minimize loss of rental income, stating as follows:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- 2. re-rent the unit as soon as possible.*

[emphasis added]

As the tenant did not end the tenancy, continued to occupy the unit, and did not pay the rent required under the agreement, I find the landlord had no obligation to re-rent the rental unit at a reasonable rent as soon as possible. Therefore, I find the landlord had no duty to minimize loss of rental income.

Summary

Taking into consideration all 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 all criteria under the four tests referenced above. I find that the landlord is entitled to compensation in the amount claimed being \$8,000.00 for rent for the month of April 2020.

Filing fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was

successful, I grant the claim for reimbursement of the filing fee of \$100.00.

Security deposit

Further to section 72, the landlord is authorized to apply the security deposit to the award

The landlord is accordingly granted a monetary order of **\$4,100.00** as follows:

ITEM	AMOUNT
Outstanding rent April 2020	\$8,000.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$4,000.00)
TOTAL MONETARY ORDER	\$4,100.00

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$4,100.00**, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: June 15, 2020

Residential Tenancy Branch