



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant did not testify at this hearing. This hearing lasted approximately 57 minutes.

The landlord confirmed that his agent who was his property manager had permission to speak on his behalf. The tenant confirmed that he had permission to represent the female tenant. "Witness PT," who was excluded from the outset of the hearing, testified on behalf of the landlord, and both parties had equal opportunities to question the witness.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord's agent confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2019 for a fixed term ending on April 30, 2020. The tenants vacated the rental unit on April 2, 2020. Monthly rent of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid by the tenants and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement, which was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenants' deposits. The tenants provided a written forwarding address by way of email on April 2, 2020, which the landlord's agent received. The landlord filed this application to retain the tenants' deposits on April 9, 2020.

The landlord seeks unpaid rent of \$1,500.00 for April 2020, because the tenants vacated the rental until on April 2, 2020, prior to the end of the fixed term on April 30, 2020, breaching the tenancy agreement.

The landlord's agent stated the following facts. On March 9, 2020, she obtained a new property owner client, who was looking for new tenants for her unit. On March 11, 2020, a quarterly inspection was done at the rental unit with the tenants. On March 13, 2020, the landlord's agent informed the tenants that a tenancy extension was not possible to May 31, 2020, but the landlord's agent and witness PT agreed to help the tenants find a new unit. The tenants were provided with photographs and information regarding the above new property owner's unit, which was available on April 1, 2020. On March 19, 2020, the tenant communicated his wish to view the new unit and on

March 20, 2020, he met with the new owner, as witness PT was not present due to covid-19. The tenant informed the landlord's agent and witness PT that he liked the property and wanted it, but the new owner wanted an April 1, 2020, occupancy date. Witness PT did not tell the tenant that he could break his lease to rent the above new unit. On March 30, 2020, the landlord's agent was informed that the new owner no longer wanted to rent the property, she did not pay a commission to the landlord's agent, and the tenant directly rented from the new owner. On March 31, 2020, the tenant sent a text message to the landlord's agent indicating that six months was a long time and he wanted to do a move-out inspection. On April 2, 2020, the tenant attended the move-out inspection but left upset, offering \$425.00 to the landlord, which was rejected by him.

The landlord stated the following facts. He did not agree for the tenants to vacate the rental unit prior to the end of the fixed term or due to covid-19. He did not agree to the tenant's offer of \$425.00 and he never asked for or made this offer to the tenant. The tenant offered to get the landlord's agent to pay him an additional \$425.00 but it did not happen. The landlord offered \$1,050.00 to settle but the tenant refused. The landlord moved into the rental unit after the tenants vacated in April 2020, he is still there now, his in-laws came to stay with him shortly after he moved back in, and he indicated in the parties' tenancy agreement that he would be personally occupying the rental unit. He sometimes rents out the rental unit in the summer months to tenants.

The tenant stated the following facts. The landlord required him to vacate the rental unit by April 30, 2020 and did not agree to an extension of the lease until May 2020. The landlord's agent and witness PT helped him find his new unit and witness PT told him that other tenants left their units early due to covid-19, so it was okay for the tenants to do so. Both the landlord's agent and witness PT were aware that the tenant took the new unit, that he was leaving early for April 1, 2020, and that unit was only available as of April 1, 2020, since the new owner wanted this date. The landlord's agent sent an email to the new owner, asking her to pay a commission for finding the tenants to rent her unit. The tenants provided a copy of two letters from the new owner, confirming the above information.

The tenant confirmed the following facts. The tenant is in a vulnerable group to catch covid-19, hotels were closed, and the tenants did not want to end up sleeping in their car. The tenant had a telephone conversation with the landlord and was told that he would accept \$425.00 from the tenant and an additional \$425.00 from the landlord's agent and witness PT because of the mistake they made with finding the tenants the new unit for April 1, 2020 and saying they could leave early due to covid-19. The tenant

followed up with a text message and the landlord denied the above agreement. The landlord requested compensation from the tenant because the tenants were vacating the rental unit prior to the end of the fixed term.

Witness PT testified regarding the following facts. During her quarterly inspection at the rental unit, the tenant wanted to extend the lease, he never told her he was leaving the rental unit, he said that he was hoping to leave in case he gets stuck because of covid-19, but no promises were made by witness PT to the tenant. She did not show the tenant the rental unit due to covid-19, he went to see it directly with the new owner. The available date of the new unit was April 1, 2020, as per the advertisements provided by witness PT to the tenant, when she helped him find the new unit. One other tenant said they wanted to leave their unit early due to covid-19, there were other tenants as well, but there were not "lots" of tenants. She did not tell the tenant it was okay for him to leave early during covid-19, as that is not her authority to do so, since it is not her rental unit. She told the new owner that the tenants were looking for a new unit, the dates did not match up, and she asked if the new owner would consider holding the property for the tenants. The new owner told her that she wanted new tenants for April 1, 2020. The tenant sent a text message to witness PT that he was renting the new unit for April 1, 2020.

Analysis

Credibility

Overall, I found the tenant to be a more credible witness than the landlord, the landlord's agent and witness PT. I found him to be honest and forthright in his testimony, providing it in a calm and candid manner. I found that the tenant agreed even if facts were not favourable to his version of events. The tenant was respectful of the landlord, the landlord's agent and witness PT throughout the hearing. He did not interrupt them when they were speaking, and he did not fight or argue with them when they provided testimony.

Conversely, the landlord provided his testimony in an upset, agitated and angry manner, yelling responses to the tenant's questions, refusing to answer the tenant's questions and becoming upset when I asked him any questions. He also asked whether he could leave the hearing early or whether he needed to be present for the entire hearing, to which I responded that it was his choice since it was his application. The landlord even stated that the tenant offered him \$425.00 to settle his application, it was not the landlord who asked for compensation. It is clear in the emails between the parties,

particularly from the landlord's agent, that the landlord wanted compensation for the rent loss, and it was not the tenant's idea to suddenly offer the landlord money, as that is not a reasonable position or explanation. Further, this application by the landlord for compensation of \$1,500.00 was made because the tenant did not accept the landlord's offer of \$1,050.00, as noted in the April 3, 2020 email from the landlord's agent to the tenant. The landlord's agent even tried to pass on her "discounted" commission fee of \$200.00 to the tenant, in the above offer of \$1,050.00.

I gave limited weight to witness PT's testimony. Her answers to the same questions asked by the tenant changed frequently throughout her testimony. Witness PT initially indicated that other tenants left their rental units early because of covid-19, then claimed it was only one person asking, then claimed it was not "lots" of people. During witness PT's testimony, the landlord's agent provided her with an answer, which she used to answer the tenant's question (that witness PT did not have the authority to make a decision that the tenants could leave the rental unit early due to covid-19), after I explicitly told the landlord's agent that she could not suggest answers or ask leading questions in her direct examination of witness PT.

Legislation

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. I find that the landlord and tenants entered into a fixed term tenancy for the period from October 1, 2019 to April 30, 2020. In this case, the tenants ended their tenancy on April 2, 2020, prior to the end of the fixed term on April 30, 2020. I find that the tenants breached the fixed term tenancy agreement.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Rent Loss

The tenants vacated the unit by April 2, 2020. The landlord moved in to the unit in April 2020, after the tenants vacated. The landlord did not re-rent the unit or attempt to do so. I find that the landlord did not suffer a rent loss. It was the landlord's intention to move back into the rental unit at the end of the fixed term, as per the parties' written tenancy agreement that was drafted by the landlord. The tenancy agreement was signed at the beginning of this tenancy, indicating "property owner occupying" and initialled by both parties. This intention was communicated repeatedly to the tenants throughout March 2020 by the landlord's agent and witness PT both verbally and in writing. However, the landlord's agent provided an email she sent to the tenant on April 3, 2020, that if she knew earlier that the tenant was going to vacate early, she could have "potentially placed a different tenant in the unit," since the landlord had "many bills to pay." This directly contradicts the landlord's written tenancy agreement and his testimony that he wanted to move back into the rental unit, which he did.

The landlord's agent and witness PT both helped the tenants find a new rental unit because the landlord refused a lease extension until May 31, 2020. They were both well aware that the new rental unit was available on April 1, 2020, as that is the date indicated in the advertisement they provided to the tenant. They also knew that the new

owner wanted tenants to occupy the unit on April 1, 2020, not at a later time, because they agreed they were told this by the new owner. The tenants provided text messages from witness PT confirming this information. The landlord's agent confirmed that she signed the new owner as a client to find new tenants for her, witness PT confirmed that she sent the advertisement and photographs to the tenant for the new unit, and the tenant contacted the new owner using this information in order to view the unit. The tenants submitted two letters from the new owner, which was not disputed by the landlord, indicating that she was introduced to the tenants by the landlord's agent and witness PT, she told them both that she wanted tenants for April 1, 2020, and she got a call from the landlord's agent on March 31, 2020 that she found her tenants and wanted a commission from her. The landlord's agent confirmed that she charged a commission fee to the new owner, which was not paid by her.

The landlord pursued that the tenants vacate the rental unit, despite the fact that there was a state of emergency in the province of B.C. and a moratorium on evictions, except for emergencies pursuant to section 56 of the *Act*, from March to June 2020. This case was not an emergency under section 56 of the *Act*. *Ministerial Order M089*, pursuant to the State of Emergency was declared on March 18, 2020.

The tenants repeatedly communicated to the landlord that they wanted to stay in the rental unit or if they were forced to move, they had to find a new rental unit as soon as possible, so they were not homeless or in a compromised position due to covid-19. The tenants were not required to move due to covid-19 but did so because of the inducement by the landlord and his agent. I find that the landlord induced the tenants to vacate the rental unit early and breach the fixed term. I find that it was reasonable for the tenants to find a new unit, that was introduced to them directly by the landlord's agent and witness PT, since the new owner was their client. The tenants moved into the new unit when it was available on April 1, 2020, since they did not have a choice due to the covid-19 pandemic. The new owner refused a later occupancy date. The tenants left the landlord's rental unit by April 2, 2020, less than a month prior to the fixed term end date of April 30, 2020.

Accordingly, I dismiss the landlord's application for rent loss of \$1,500.00 for April 2020, without leave to reapply.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

Tenants' Deposits

The landlord continues to hold the tenants' deposits totalling \$1,500.00. Over the period of this tenancy, no interest is payable on the tenants' deposits. Although the tenants did not apply for the return of their deposits, in accordance with Residential Tenancy Policy Guideline 17, I am required to deal with their return pursuant to the landlord's application to retain them.

I order the landlord to return the tenants' entire security and pet damage deposits, totalling \$1,500.00, within 15 days of receiving this decision. I issue a monetary order to the tenants against the landlord for \$1,500.00.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,500.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: July 28, 2020

Residential Tenancy Branch