



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDCL-S, FFL

### Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on April 17, 2020 the Dispute Resolution Package and the evidence the Landlords submitted with the Application were sent to the Tenants, via registered mail. The Tenants acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

### Issue(s) to be Decided

Are the Landlords entitled to compensation for lost revenue and to keep all or part of the security deposit?

### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on December 01, 2011;
- a security deposit of \$1,050.00 was paid;
- the original tenancy agreement was for a fixed term, the fixed term of which ended on May 31, 2013;

- the parties periodically extended the fixed term of the tenancy agreement;
- in 2019 the parties agreed to extend the fixed term of their tenancy agreement from July 01, 2019 to June 30, 2020;
- the parties agreed, in writing, that the rent for the period between July 01, 2019 and June 30, 2020 would be \$2,460.00;
- rent was due by the first day of each month;
- the parties agreed, in writing, that the Tenants can terminate the lease with one calendar month's written notice and "pay \$500.00 documentation fee plus any vacant period of up to a maximum of two month's rent"
- the parties agreed, in writing, that if there is no loss of rent, the Tenants will only be required to pay the "\$500.00 documentation fee";
- the Tenants moved out of the rental unit on March 31, 2020; and
- the Tenants did not pay rent for April of 2020.

The male Tenant stated that approximately 10 days prior to March 31, 2020 he informed the Agent for the Landlord that they needed to vacate the rental unit by March 31, 2020. He stated that the Agent for the Landlord told him they would not need to pay rent for April providing the unit was re-rented for April of 2020.

The Agent for the Landlord stated that on March 26, 2020 or March 27, 2020 the male Tenant informed the Agent for the Landlord that they needed to vacate the rental unit by March 31, 2020. He stated that he told the Tenant they would not need to pay rent for April if the unit was re-rented for April of 2020.

The male Tenant stated that he had a friend that wanted to move into the unit for April 01, 2020. He stated that he observed this friend leave two or three messages for the Agent for the Landlord, however the Agent for the Landlord did not return his friend's telephone calls. The Agent for the Landlord stated that he did not receive any messages from this friend.

The Agent for the Landlord stated that one or two days after he was informed the rental unit was being vacated, he began advertising the rental unit on a popular website. He stated that he was able to find a new tenant for the rental unit. He stated that the new tenancy began on April 15, 2020 or April 16, 2020.

The male Tenant stated that the person who moved into the rental unit is the female sister's friend and he knows that person moved into the rental unit on April 01, 2020. He provided a phone number for the person who moved into the rental unit in April of 2020, and he asked that she be called as a witness.

I contacted the person identified by the male Tenant at the telephone number provided. The person answering that telephone call identified herself as the person the Tenants wished to call as a witness. She was advised that the Tenants had asked that she be called as a witness to these proceedings. She stated that she did not wish to participate as a witness at these proceedings. As this individual did not agree to participate in the proceedings, she did not provide witness testimony.

The Landlord is seeking compensation, in the amount of \$2,460.00, for lost revenue from April of 2020.

### Analysis

On the basis of the undisputed evidence, I find that sometime during the latter part of March of 2020, the Tenants gave notice to end this tenancy by March 31, 2020 and that the rental unit was vacated on March 31, 2020.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that the Landlord gave notice to end the tenancy in accordance with sections 46, 47, 48, 49, 49.1, and 50 of the *Act*.

Section 45 of the *Act* authorizes a tenant to end a tenancy by giving notice that is not earlier than one month after the date the landlord receives the notice and 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.

On the basis of the undisputed evidence, I find that sometime during the latter part of March of 2020, the Tenants gave notice to end this tenancy by March 31, 2020. As this notice was not served in accordance with the timelines established by section 45 of the *Act*, I find that this tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that the fixed term of the tenancy ended on March 31, 2020, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in

writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenants vacated the rental unit on March 31, 2020.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

I find that the Tenants failed to comply with section 45 of the *Act* when they did not provide proper notice to end the tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In addition to establishing that the Tenants breached the *Act* by not providing proper notice, the Landlords bear the burden of proving they lost revenue for April of 2020 as a result of the Tenants' breach.

I find that the Landlords submitted insufficient evidence to establish that they did not collect rent for April of 2020. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the unit was not rented until April 15, 2020 or April 16, 2020, or that refutes the male Tenant's testimony that a friend of the female Tenant's sister moved into the unit on April 01, 2020.

In adjudicating this matter, I note that the Landlords submitted no evidence to corroborate his testimony that the unit was re-rented on April 15, 2016 or April 16, 2016. I expect evidence, such as a copy of a new tenancy agreement, would have been relatively simply to submit.

As the Landlords failed to meet the burden of proving they lost revenue for April of 2020, I dismiss their claim for lost revenue for that month.

As the Landlords have failed to establish the right to keep any portion of the Tenants' security deposit, I dismiss their claim to retain the security deposit of \$1,050.00.

I find that the Landlords have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their claim to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

As the Landlords have failed to establish the right to keep any portion of the security deposit, I find that the entire deposit of \$1,050.00 must be returned to the Tenants and I am granting them a Monetary Order in that amount. In the event the Landlords fail to voluntarily comply with the Monetary Order, it may be served on the Landlords, filed with the Small Claims Court of British Columbia, 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: July 29, 2020

---

Residential Tenancy Branch