



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL FFL

### **Introduction**

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

- a monetary order for unpaid rent in the amount of \$6,650 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by his property manager ("**KH**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The KH testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant testified, and KH confirmed, that the tenant served the landlord with his evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$6,650; and
- 2) recover his filing fee.

### **Background and Evidence**

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

The parties entered into a written, fixed term tenancy agreement starting February 1, 2020 and ending January 31, 2021. Monthly rent was \$2,450 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,225, which the landlord returned to the tenant on April 10, 2020.

The tenant vacated the rental unit on March 31, 2020.

The landlord's claim is for the recovery of lost rent for the months of April, May, and half of June 2020 as well as for liquidated damages. The landlord submits that by moving out prior to the end of the fixed term, the tenant "broke" the tenancy agreement.

The tenant testified that the tenancy agreement ended by way of a mutual agreement, and as such, he is not responsible for paying any portion of the landlord's claim. Additionally, he argued that, if he did breach the tenancy agreement, that the landlord failed to re-rent the rental unit in a reasonable amount of time.

The circumstances leading to the end of the tenancy are straightforward and are not in dispute. On March 4, 2020, KH testified he learned from the residential property's building manager that the tenant was renting out the rental unit on AirBnB. A discussion between the tenant and KH via email followed over the next few days which led to the tenant moving out.

On March 4, 2020, KH wrote:

I am suspecting that you are conducting a short term rental business in your rental unit.

There's been report by residents that your guests specifically said they are entering [the rental unit] as an AIRBNB guest.

I'm going to let you move out and end the tenancy before we get into any further problem with strata.

Can you please get out by the end of March?

That same day, the tenant replied:

I'm not conducting a rental business in the unit. I've been travelling for work as I do quite often and didn't think it was an issue in the building.

Apologies if this has caused any issues for other residents, I honestly didn't realize it was an issue.

It's not ideal, but if that's your decision, I can look for other accommodations and be out by end of March.

Later that day, KH responded:

Sorry, could you explain so I can relay this to the agent. Are you renting your unit out? The lease doesn't allow subleasing Without landlords approval.

Would like to know if AirBnb was used? And you rented the unit out?  
It's not allowed in [redacted] unless you have a business license as well..

Later that night, the tenant replied:

I had subleased the unit out while I was travelling quite a bit for work. I didn't realize that was not allowed, I must have overlooked that aspect of the lease.

I'm not trying to mislead you in the situation. I understand now that it's not allowed.

Ideally I'd still love to live in the space and have the landlords approval to sublease while I'm away for work and can happily even pay a bit more if needed. If this isn't a good fit, I understand and as mentioned can look for other accommodations for April.

On March 5, 2020, KH replied:

It's a 1000\$ fine each time  
You may get one this time  
Owner and strata both said they prefer that you move if this is the case

Please confirm that you can find a new home by end of month?

Later that day the tenant replied:

At this point it sounds like I don't have a choice. I'll figure out something for April and refrain from subleasing until then.

Could you kindly propose dates to show the unit so I can be sure to accommodate.

On March 6, 2020, KH wrote:

Sorry but this building is extremely strict due to past incidents and the owners adamant

We manage the building that's why I was able to get to you before we got a fine.

The Strata has enough evidence to fine you \$1000 for this incident and any incidents after each occurrence. I just wanted to get this resolved before we have to come to that

I would simply like to meet you at the end of March to get the keys

Please confirm by a writing (attachment to an email) and by the end of March

On March 8, 2020, the tenant responded:

Ok, I understand. Thanks for at least letting me know before a fine ensured.

I will be out at the end of March and can meet you to drop off the keys.

The tenant testified that he did not believe he was “breaking” the tenancy agreement by moving out before the end of the fixed term, because in his first email to him KH wrote that he would “let [the tenant] move out and end the tenancy”.

The tenant testified that he understood this to mean that the landlord was willing to mutually end the tenancy, given that he, as a tenant, did not need the landlord’s permission to “break” the lease. The tenant stated he could have simply moved out before the end of the fixed term, without notice to or permission from the landlord, and suffer the financial consequences.

KH stated that how the tenancy ended was in a “grey area” and that he was not certain if it was ended by mutual agreement or due to the tenant’s breach of the tenancy agreement.

KH testified that he posted the rental unit for rent on craigslist on March 18, 2020, and that he entered into a tenancy agreement with a new tenant on May 1, 2020, but that the tenancy started on June 15, 2020.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the “**Four-Part Test**”)

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application.

In this case, the landlord bears the onus to prove it is more likely than not that the tenancy ended due to the tenant's breach of the tenancy agreement, and not by a mutual agreement of the parties.

1. How did the tenancy end?

Section 44(1)(c) of the Act permits mutual agreements to end tenancy. It states:

**How a tenancy ends**

**44(1)** A tenancy ends only if one or more of the following applies:

[...]

(c) the landlord and tenant agree in writing to end the tenancy;

Policy Guideline 30 confirms this. It states:

**E. EARLY END TO A FIXED TERM TENANCY BY AGREEMENT**

A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date. A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required.

Based on my review of the emails between the parties reproduced above, I find that the parties mutually agreed that the tenancy would end at the end of March 2020. I find the tenant's argument that KH offered to mutually end the tenancy by saying he would "let [the tenant] move out and end the tenancy" to be persuasive. As the tenant argued, a tenant does not need a landlord's permission to vacate a rental unit prior to the end of a fixed term of a tenancy: he need only do it.

I find that KH's offer to "let [the tenant] move out and end the tenancy...by the end of March" amounts to an offer to mutually end the tenancy agreement. A landlord does not "let" a tenant breach a tenancy agreement; a tenant simply does that. Rather, I understand that by stating that he would let the tenant move out and end the tenancy,

KH indicated his willingness to release the tenant from his obligations under the tenancy agreement.

The tenant accepted this proposal in his subsequent emails by stating “it’s not ideal, but if that’s your decision, I can look for other accommodation and be out by the end of March” and “If this isn’t a good fit, I understand and as mentioned can look for other accommodations for April.”

The tenant then carried out his obligations under the mutual agreement, by moving out by the end of March 2020.

For the foregoing reasons, I find that the tenancy was ended by way of a mutual agreement that was reduced to writing over the course of several emails.

## 2. Landlord’s compensation

As I have found that the tenancy ended by mutual agreement, and not by the tenant breaching the tenancy agreement, the first step of the Four-Part Test has not been satisfied. Accordingly, the landlord is not entitled to any part of the compensation claimed.

It is therefore not necessary for me to consider whether the landlord acted reasonably in re-renting the rental unit. As no breach has occurred, there is no requirement for the landlord to act reasonably to minimize his loss.

## **Conclusion**

I dismiss the landlord’s application, in its entirety, without leave to reapply.

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: September 3, 2020

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Residential Tenancy Branch