



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on February 9, 2021, wherein the Tenants sought monetary compensation from the Landlord in the amount of \$21,300.00 as well as recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 11, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenants' Names

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment

might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenants named their three children as Tenants on the Application. A review of the tenancy agreement confirms that the Tenant, R.Q. and V.Q. are the only named tenants. I therefore Amend the Tenants' Application to correctly name the Tenants.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant, R.Q., testified as follows. This one year fixed term tenancy began January 1, 2021. Monthly rent was \$3,800.00 and the Tenants paid a \$1,900.00 security deposit.

The Tenants vacated the rental unit during the first week of February 2021 as they understood the rental unit sold and the new owners wanted vacant possession.

In the claim before me the Tenants sought compensation for the following:

Moving in expenses	\$3,000.00
January rent	\$3,800.00
Moving out expenses	\$3,000.00
3 months rent	\$11,400.00
TOTAL CLAIMED	\$21,200.00

The parties confirmed the Landlord did not issue a 2 Month Notice to End tenancy for Landlord's Use pursuant to section 49 of the *Act*.

The Landlord confirmed that the subject to's had not been removed and he merely informed the Tenant that he had an accepted offer on the rental property.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord/Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenants seek monetary compensation from the Landlord for an alleged breach of their fixed term tenancy agreement.

A tenancy may only be ended in accordance with the *Act*. Section 44 of the *Act* sets out how a tenancy ends and reads as follows:

How a tenancy ends

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

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

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

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant

are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

To be effective, a notice to end tenancy must comply with section 52 of the *Act* which provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this case the parties agreed the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49, nor did the Landlord issue any formal notice. As section 52 requires, to be effective a landlord's notice to end tenancy must be on the *approved form*. In this case the Landlord did not issue any notice, and therefore did not end the tenancy.

As discussed during the hearing, had the Landlord issued a 2 Month Notice pursuant to section 49 on the basis the rental unit had sold, the Tenants would have likely been successful in having that notice cancelled as a landlord may not end a tenancy prior to the expiration of the fixed term. Unfortunately, the Tenants did not contact the branch to discuss this situation, as had they done so, the tenancy would likely be ongoing.

In any event, the fact is that the Tenants ended the tenancy when they vacated the rental unit.

Consequently, their claim for monetary compensation based on the end of their tenancy is without legal basis. The Landlord did not breach the *Act*, the *Regulation* or the tenancy agreement entitling the Tenants to monetary compensation.

As the Tenants have been unsuccessful in their Application, their request to recover the filing fee is similarly dismissed.

Conclusion

The Tenants' request for monetary compensation from the Landlord and recovery of the filing fee is dismissed 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: June 11, 2021

Residential Tenancy Branch