



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing is a Review Hearing of a Decision dated April 19, 2021 following a Review Consideration dated April 26, 2021.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. Both parties confirmed they were not recording the hearing. No issues of service were raised.

The hearing lasted 72 minutes.

Mediation

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the

settlement may be recorded in the form of a Decision or an Order.

Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, and were unable to resolve the issues.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties submitted many documents and photographs as well as considerable disputed testimony in a 72-minute hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This is an application by the landlord for compensation for five months loss of rent, for damages for yard work and repairs. The landlord submitted amendments to the claim and revised Monetary Order Worksheets.

The landlord claimed the following at the hearing:

ITEM	AMOUNT
Rent for December 2020	\$1,875.00
Rent January 2021	\$1,875.00
Rent February 2021	\$1,875.00
Rent March 2021	\$1,875.00
Rent April 2021	\$1,875.00
Yard work	\$183.75
Repairs (paint and labour)	\$96.26
TOTAL CLAIM - DAMAGES	\$9,655.01

The parties agreed the tenancy began September 15, 2020 for a 1-year fixed term ending September 14, 2021. Rent was \$1,875.00 monthly payable on the first. At the beginning of the tenancy, the tenants paid \$937.50 as a security deposit which the landlord holds. The landlord stated that the unit was a single-family residence built around 1940.

The tenants moved out November 30, 2020 in advance of the end date of the fixed term.

The tenants agreed to pay the landlord for the yard work and repairs. At issue is the claim for five months lost rent.

The tenants testified as follows. The male tenant has a lifelong severe allergy to mold for which he has been hospitalized in the past. In early November 2020, the male tenant began to experience symptoms of the allergic reaction which alarmed the tenants. They testified that the roof began to leak onto the bathroom ceiling and wet stains (assumed to be mold) then spread. The bathroom had no fan and the house had inadequate ventilation. The female tenant worked from home.

The male tenant said his "anxiety was through the roof" and "it was not a livable situation". The tenants decided that they could not stay in the house for health reasons and possible "serious repercussions".

They gave the landlord a notice on November 6, 2020 stating they were moving out primarily because of the leaking roof and mold. The tenants testified the landlord then provided a "dirty, filthy" humidifier which itself contained a black substance they believed to be mold.

The tenants provided their forwarding address and moved out on November 30, 2020.

The landlord testified that as soon as she received the tenants' notice, she provided them with an adequate, clean humidifier. She had a mold test done in the house on November 9, 2021. The results received November 18, 2020 stated there was mold in the house, but it was limited to the crawl space in the basement. The landlord expressed the opinion that the mold should not have bothered the tenants. The tenants replied that they believed spores were circulating throughout the house and the mold was the cause of the male tenant's health issues.

On November 18, 2020, the landlord emailed the results to the tenants but did not

provide them with a copy of the report. The landlord then had the basement sealed on December 5, 2020. A mold test on December 9, 2020 returned results on December 17, 2020 and indicated the mold problem was resolved.

On November 10, 2020, the landlord's workers started repairs on the roof which were completed on December 1, 2020.

On December 7, 2020, the landlord testified that she listed the property with a property rental agent who was unsuccessful in finding a replacement tenant. The landlord testified that the rent was reduced twice. She was not certain why the property did not rent and surmised that it was difficult to rent in the colder months. As well, the unit was old and may not be suitable for all renters. The landlord did not provide details about the advertising or the extent of the response such as the number of viewings.

The landlord sold the property in June 2021.

The landlord requested compensation for five months loss of rent stating that she acted quickly when she received the tenants' complaints and they should have given her adequate time to remedy the situation. The tenants stated that the situation was urgent requiring that they vacate as soon as possible.

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 tenant 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 landlord proven the amount or value of their damage or loss?
4. Has the landlord 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.*

Consideration of the first part of the 4-part test follows.

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

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

(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].*

In this dispute, the tenancy was a fixed term tenancy, so section 45(2) applies. The tenant gave notice by way of email to the landlord on November 6, 2020 that the roof was leaking, and they believed there was mold in the unit; they stated they would be moving out at the end of November 2020. The tenants did not wait for the landlord to address the issue and believed the situation called for moving out immediately. The tenants' testimony as to medical issues was unsupported by any documentary evidence.

I find the landlord's evidence credible that the mold was confined to one area in the basement and was not present in the living area. I accept the landlord's testimony supported by documentary evidence that she responded to the tenants' complaint in a timely, efficient and responsible manner.

I find the tenants ended the tenancy on a date that was earlier than the date specified in the tenancy agreement. Further, the tenants did not provide the landlord with a reasonable opportunity to investigate and remedy the complaints.

Thus, I conclude that the tenant breached section 45(2)(b) of the Act by ending the tenancy early and section 45(3) by not providing the landlord with a reasonable period to correct the alleged breach of the material terms with respect to leaking and mold.

I now turn to a consideration of the second part in the 4-part test.

2. Did the loss or damage result from the 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 tenants' wrongful act and the landlord's loss. It is this connection that justifies the imposition of responsibility on the tenants.

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

If the answer is "no," the tenants' 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 the tenants breached the agreement, their breach is not a cause-in-fact.

I accept the landlord's testimony and find that the unit was not rented again until she sold the unit seven months after the tenants moved out.

In this case, I find that but for the tenants' ending the tenancy as they did, that the landlord would not have suffered a loss of rent for five months.

I now turn to a consideration of the third part of the 4-part test.

3. Has the applicant proven the amount or value of their damage or loss?

I find the parties agreed on the amount of rent and I find the unit was vacant for the claimed five months. I accept the landlord's credible testimony in this regard and find the landlord has proven the amount of the loss of rent.

I now turn to a consideration of the third part of the 4-part test.

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

The landlord testified that on December 6, 2020, a month after receiving the tenants' notice, they hired a rental company to find replacement tenants.

The landlord stated that they changed the terms of the lease by decreasing the rent twice to no avail. The landlord relied on the rental company to advertise and interview applicants appropriately and did not provide details of the efforts or responses.

Policy Guideline 5 – Duty to Minimize Loss states in part as follows:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

*A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement **must make reasonable efforts to minimize the damage or loss.***

Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and

common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;*
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;*
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.*

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

The Policy Guideline also states:

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.*

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

The landlord did not retain the rental company until a month after receiving notice which I find was not a practical, common sense choice. Considering the circumstances, I find it would have been reasonable to expect the landlord to try and rent the rental unit for the

month of December 2020, that is, as soon as the tenants moved out and to rent at an economic rent.

The landlord did not know in sufficient detail what efforts were made to find replacement tenants; she provided no plausible explanation on the failure to find suitable replacement tenants for the lengthy period of 5 months. I am unable to determine on the evidence if the landlord could have rented the unit by reducing the rent earlier or making greater or different effort.

Based on the landlord's evidence, I have concluded that the landlord was unconcerned about whether or not the unit was re-rented as she expected the tenants had an enforceable obligation to pay rent until the end of the fixed term. In the absence of suitable evidence to the contrary, I find the landlord's efforts were perfunctory and inadequate.

I therefore find the landlord has not met the burden of proof on a balance of probabilities that they made reasonable efforts reduce or mitigate damage or loss.

Nevertheless, I find it reasonable in the circumstances that the landlord would not have rented the unit for the month of December 2020. I find the landlord has met the burden of proof with respect to this aspect of the claim and I grant the landlord a monetary award for \$1,875.00 for loss of rent for one month.

The tenants have agreed to the two minor claims of the landlord. I grant the landlord a monetary award for these expenses.

In the circumstances, I do not award the landlord reimbursement of the filing fee.

My conclusion is set out in the following table:

ITEM	AMOUNT
Award to landlord: Loss of rent December 2020	\$1,875.00
Award to landlord: Yard work	\$183.75
Award to landlord: Repairs (paint and labour)	\$96.26
(Less Security deposit)	(\$937.50)
Monetary Order Landlord	\$1,217.51

In summary, the tenants are directed to pay the landlord **\$1,217.51**. I grant the landlord a Monetary Order in this amount.

Conclusion

I grant a Monetary Order to the landlord of **\$1,217.51**. This Order must be served on the tenants. This Order may be filed and enforced in the courts of the Province of British Columbia.

Dated: June 16, 2021

Residential Tenancy Branch