Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, MNDCL, 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 recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Preliminary Issue # 1 – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout the conference, the tenant repeatedly interrupted the landlord and me. Several times I asked her to allow the landlord to speak without disruption.

Despite warnings, the tenant continued to interrupt, to argue and to voice a different version of events when it was the landlord's opportunity to testify.

The tenant seemed upset, indignant, and argumentative throughout the hearing. She disrupted the orderly conduct of the hearing.

The hearing took longer because of the behaviour by the tenant. I caution the tenant not to repeat the inappropriate and disruptive conduct at any future hearings at the RTB, as this behaviour will not be tolerated; I warned the tenant about the possible procedural consequences.

Issue(s) to be Decided

Is the landlord entitled to the relief claimed?

Background and Evidence

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

The landlord provided the following background to the tenancy agreement:

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	August 31, 2019
Date of ending	November 30, 2020
Monthly rent payable on 1st	$985.00
Security deposit	492.50
Pet deposit	none
Outstanding rent at time of hearing	$985.00 (contested by tenant)

No written agreement was submitted.

The landlord claimed compensation for the following:

INFORMATION	DETAILS
Outstanding rent (December 2020)	$985.00
Reimbursement of filing fee	$100.00
TOTAL CLAIM BY LANDLORD	**$1085.00**

The landlord testified that the tenant provided notice she was moving out by text on November 23, 2020. She stated she would be moving out at the end of November 2020. A copy of the text was submitted as well as a subsequent handwritten letter signed by the tenant dated November 25, 2020. The text states,

> *Hi [name of landlord] so I have some news I have taken on a new job and am goin to be moving back to the island sorry for the short notice but kinda just all happened at once im goin to move at the end of the month. Obviously you can keep my half month rent damage deposit towards short notice*.

The landlord and tenant conducted a condition inspection report on November 29, 2019. The parties agreed on a partial refund of the security deposit. The landlord testified that

the tenant promised to pay the rent for December 2020 by the end of December 2020

The tenant handed to keys over to the landlord on November 29, 2019. The landlord testified that the unit was unoccupied for the month of December 2019 as she was unable to find a replacement occupant on short notice before the holidays.

The tenant wrote to the landlord by text dated December 12, 2020 confirming that she would send the rent for December 2020 to the landlord by the end of December 2020. The text states:

> *Hi [name of landlord] just pick up the mail thank you very much I will definitely send the rent by the end of the month merry Christmas to you*

The landlord submitted copies of texts in support of her testimony that the tenant agreed to pay rent for the month of December 2020.

On January 5, 2020, the landlord asked the tenant by text, “when you were going to e-transfer December’s rent”. The tenant replied by text stating, “I don’t have the money right now to send”. Later, the tenant offered to “split the payment into 4 starting on the 15th [January 2021]” to which the landlord agreed. On January 17, 2021 the landlord sent a text to the tenant stating the first installment had not been received.

The landlord submitted copies of supporting texts for her testimony.

The landlord has not received rent for the month of December 2020.

The landlord informed the tenant by texts that the unit was unoccupied in December 2020 and January 2021.

The tenant acknowledged she did not provide one month’s notice of her intention to move out and confirmed that she has not paid rent for the month of December 2020. She submitted testimony and written submissions setting out why she did not believe she should have to pay rent for December 2020, stating in part as follows (as written):

> She (the landlord) advised me that I couldn’t keep the keys as she had someone to rent the suite. Now she is trying to double charge for that month by collecting rent from me as well….
>
> I DON’T BELIEVE I SHOULD HAVE TO PAY FOR A MONTHS RENT WHEN

SHE DEMANDED THE KEYS BACK AND ME TO DO THE INSPECTION AS SHE HAD OBVIOUSLY RE RENTED THE SUITE FOR DECEMBER 1ST. SHE ADVISED AFTER THAT THE PROSEPCTIVE TENANT FELL THROUGH AND CANCELED ON HER LAST MINUTE WHICH WOULD NOT LEGALLY BE MY RESPONSIBILTY AS HAD SHE NOT ACCEPTED THAT TENANT SHE WOULD OF GOT ANOTHER ONE AND I AM NOT LIABLE FOR HER POOR JUDGEMENT. I AM ALSO NOT LIABLE FOR RENT FOR A SUITE THAT I DON'T HAVE POSESSION OF AT THE TIME THAT SHE IS CHARGING ME RENT FOR AS PER MY LAWYER.

The landlord requested a Monetary Order for one month's rent and reimbursement of the filing fee. The tenant requested that the landlord's claim be dismissed.

Analysis

I have reviewed all documentary evidence and testimony.

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 the tenant and the landlord give differing versions of events, the credibility of the parties must be considered. I found the landlord to be well-prepared and believable. I found the tenant did not provide a convincing or plausible narrative for not paying the landlord the rent. I prefer the landlord's testimony as it was also well supported by evidence. Where the parties' evidence conflicts, I prefer the landlord's version.

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 tenant fail to comply with Act, regulations, or tenancy agreement?*

Section 44 and 45 of the Act sets out how a tenant may end a tenancy. A month-to-month agreement can be ended by a tenant by giving one-month notice no later than the day before the rent is due. Section 45 states:

Tenant's notice

45 *(1) A tenant may end a periodic 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, and

(b) 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

Based on the parties' evidence, I find they had a monthly tenancy with rent paid on the first of the month. I find the tenant gave notice by text on November 23, 2020 and by letter on November 25, 2020 that she was moving out at the end of November 2020.

I conclude that the tenant did not provide notice in compliance with the Act.

I also find the tenant promised to pay the landlord rent for the month of December 2020 as reflected in the exchange of texts, copies of which were submitted.

I find the landlord has met the burden of proof with respect to the first part of the 4-part test.

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 tenant 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 tenant's 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 during December 2020.

In this case, I find that but for the tenant's ending the tenancy as they did, that the landlord would not have suffered a loss of rent for the month of December 2020.

I find the landlord has met the burden of proof with respect to the second party of the 4-part test.

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?

The amount of rent was not an issue. As agreed by the parties, I find the rent was $985.00 a month. I find the unit was vacant for the claimed month of December 2020.

I do not accept the tenant's unsupported testimony that the landlord rented the unit in December 2020. I prefer the landlord's evidence in this regard.

I accept the landlord's credible testimony and find the landlord has proven the amount of the loss of rent. I find the landlord has met the burden of proof with respect to the third part of the 4-part test.

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 despite her efforts, she was unable to find a tenant on such short notice. She explained that a factor was the upcoming holiday season and prospective tenants were not willing or able to move at that time of year.

The landlord testified that she found a replacement tenant for January 1, 2021, who subsequently withdrew.

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.

I accept the landlord's testimony as credible that she tried to find an occupant to rent the unit as soon as possible after the tenant gave notice. I accept her testimony that no applicant was located who could move in before January 1, 2021. Considering the

circumstances, including the time of year, I find the landlord has met the burden of proof on a balance of probabilities that they made reasonable efforts reduce or mitigate damage or loss.

I find the landlord has met the burden of proof with respect to the fourth part of the 4-part test.

Summary

I find the landlord has met the burden of proof with respect to all aspects of her claim.

As the landlord has been successful, I grant the landlord an award for reimbursement of the filing fee.

Award

I award the landlord a Monetary Order of **$1,085.00** calculated as follows:

AWARD	AMOUNT
Outstanding rent	$985.00
Reimbursement of filing fee	$100.00
TOTAL AWARD	**$1,085.00**

Conclusion

I grant a Monetary Order to the landlord of **$1,085.00.** This Order must be served on the tenant. This Order may be filed and enforced in the courts of the Province of British Columbia.

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 20, 2021

Residential Tenancy Branch