



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on April 3, 2021 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on July 16, 2021 and was meant to continue until January 31, 2022. During the tenancy, the Tenants were required to pay rent in the amount of \$2,400.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,200.00 which the Landlords returned to the Tenants. The tenancy ended on March 4, 2021.

The parties agreed that the Tenants provided their verbal notice to end tenancy to the Landlords on February 6, 2021, as well as their written notice to end tenancy on February 16, 2021 with an effective vacancy date on March 31, 2021.

The Landlords stated that they advertised the rental unit and conducted several showings in an attempt to re-rent the rental unit. The Landlords provided a showing schedule in support. The Tenants confirmed that the Landlords conducted several showings while they still occupied the rental unit. The Landlords stated that they did not find a suitable tenant to occupy the rental unit until April 15, 2021. The Landlords stated that the Tenants failed to pay rent for April 2021. As such, The Landlords are claiming for half of April rent in the amount of \$1,200.00.

In response, the Tenants stated that they felt as though they were justified in ending the fixed term tenancy early as they suffered a loss of quiet enjoyment of the rental unit due to issues with the upstairs occupants. The Tenants stated that they offered to help the Landlords advertise and accommodate showings in an attempt to mitigate the loss. The Tenants stated that the Landlords did not advertise the rental unit enough and should not have had any issues to find a new tenant for the rental unit given the amount of notice the Landlords received by the Tenants.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, 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.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, the Tenants stated that they felt justified in ending the fixed term agreement due to the fact that they suffered a loss of quiet enjoyment.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, Policy Guideline #8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

According to Section 45(3) of the Act, 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.

While the Tenants felt they were suffering a loss of their quiet enjoyment, I find that the Tenants did not communicate that they believed these problems were a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Tenants did not provide adequate notice to the Landlords pursuant to section 45(3) of the Act.

I accept that the Tenants provided their written notice to end tenancy to the Landlords on February 16, 2021 indicating that the tenancy will end on March 31, 2021 before the Tenants vacated the rental unit on March 4, 2021.

I accept that the Landlords placed several advertisements and conducted several showings in an attempt to re rent the unit, however, was unable to find a new suitable occupant until April 15, 2021. I find that the Tenants were not entitled to end the fixed term tenancy early, which resulted in the Landlords incurring a loss of rental income in the amount of \$1,200.00. I further find that the Landlords took reasonable steps to mitigate their loss. As such, I find that the Tenants are responsible to pay rent for half of April 2021 in the amount of \$1,200.00.

Having been successful, I find the Landlords are entitled to recover the filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$1,300.00.

### Conclusion

The Tenants breached the Act by ending their fixed term tenancy early. As such, the Landlords are granted a monetary order in the amount of \$1,300.00. The order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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 02, 2021

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Residential Tenancy Branch