



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords November 18, 2021 (the “Application”).

The Landlords sought:

- Compensation for monetary loss or other money owed
- To recover unpaid rent
- To recover the filing fee

This was an adjourned hearing. The first hearing occurred June 20, 2022, and an Interim Decision was issued the same date. This decision should be read with the Interim Decision.

The Landlords and Tenant appeared at the second hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlords’ evidence and confirmed there were no issues with service. The Landlords confirmed receipt of the Tenant’s evidence and confirmed there were no issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	10 months of rent	\$17,500.00
2	Plane tickets for Landlords	\$1,324.31
3	Filing fee	\$100.00
	TOTAL	\$18,924.31

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started August 01, 2021, and was for a fixed term ending August 01, 2022. Rent was \$1,750.00 per month due on the first day of each month. The agreement included an addendum requiring the Tenant to provide 60 days notice ending the tenancy.

At the first hearing, the parties agreed the Tenant moved out of the rental unit October 08, 2021. At the second hearing, the Landlords said they do not know when the Tenant moved out of the rental unit but that the Tenant had moved out at the beginning of October of 2021.

#1 10 months of rent

The Landlords sought compensation for 10 months of rent and testified as follows. The Tenant signed a one-year fixed term tenancy agreement. The Tenant ended the tenancy early on short notice. The Landlords had asked for 60 days notice ending the

tenancy. The Landlords received the Tenant's notice to vacate September 17, 2021, ending the tenancy for November 19, 2021. The Tenant ended up moving out in early October. A move-out inspection was done, and the Tenant returned the keys to the rental unit, October 09, 2021. The Tenant's October rent cheque bounced and therefore the Tenant owes October rent.

The Landlords further testified as follows. They posted the unit for rent September 17, 2021, when they received the Tenant's notice to vacate. The unit was posted for \$1,700.00 in rent per month. The unit was re-rented October 15, 2021, for \$1,700.00 per month.

The Landlords further testified as follows. They live in another province and had to come to BC to deal with the Tenant and this tenancy. They did not have time to go back and forth between provinces and it was a waste of their time. The Tenant ending the tenancy early caused them a lot of stress.

The Tenant provided the following testimony and submissions. They are not responsible for paying for further rent because the unit was re-rented October 15, 2021. The Landlords have not provided the new tenancy agreement showing the unit was rented for \$1,700.00 per month. The Landlords' parents lived in the area of the rental unit and the Tenant dealt with the Landlords' father during the tenancy. It was not necessary for the Landlords to come to BC to deal with the rental unit. They gave 60 days notice ending the tenancy and moved out early.

In reply, the Landlords disputed that their father should have had to deal with the rental unit because they are the landlords and not their father. The Landlords also submitted that the new tenancy agreement is confidential, and they did not have to provide it.

#2 Plane tickets for Landlords

The Landlords sought compensation for the cost of them flying from another province to BC to deal with the rental unit when the Tenant ended the tenancy early. The Landlords submitted that they would not have had to come to BC if the Tenant had not "stressed them out". The Landlords said they felt they personally needed to be in BC to handle the situation, for example, to file the Application. The Landlords acknowledged their father showed the Tenant the rental unit prior to the tenancy and did the move-out inspection. The Landlords testified that they also had a friend attend the move-out inspection to act as a witness.

The Tenant disputed that they are responsible to pay for the plane tickets. The Tenant testified that they never met the Landlords and only dealt with the Landlords' father in person and one of the Landlords by text message. The Tenant also pointed out that the Application could have been filed online.

In reply, the Landlords said they acknowledge they could have filed the Application online, but they are "old school". The Landlords said they went into panic mode when the Tenant ended the tenancy early.

Both parties submitted documentary evidence which I will refer to below as necessary.

Analysis

Section 7 of the *Act* addresses compensation and states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

RTB Policy Guideline 16 deals with compensation for damage or loss and states in part:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as Applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 10 months of rent

Section 26 of the *Act* addresses paying rent and states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

RTB Policy Guideline 03 addresses loss of rent and states in part:

A tenant is liable to pay rent until a tenancy agreement ends...

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement...

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy...

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-

rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

Even if a landlord is successful in re-renting the premises, a claim for loss of rent may still be successful where the landlord has other vacancies and is able to establish that those other premises would have been rented had the tenancy in question continued...

There is no issue that the Tenant entered into a fixed term tenancy starting August 01, 2021, and ending August 01, 2022.

Section 45 of the *Act* states:

(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.

The Tenant breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy early. The Tenant did not suggest that section 45(3) of the *Act* applied.

I note that the term in the addendum of the tenancy agreement setting out a requirement of 60 days notice is contrary to the *Act* and unenforceable pursuant to section 5 of the *Act*. The Tenant had to comply with section 45 of the *Act* in relation to ending the tenancy.

Due to the Tenant's breach in ending the tenancy early the Landlords did not receive rent from the Tenant for October of 2021 to August of 2022 as they otherwise would have.

However, the Landlords re-rented the unit October 15, 2021, and therefore only lost rent for half of October of 2021. The Landlords did not lose rent for the remainder of the term of the tenancy agreement because someone else rented the unit and paid them rent.

The Landlords testified that they re-rented the unit for \$1,700.00 per month, less than what the Tenant was paying. However, the Landlords did not seek loss of rent due to this. Further, the Landlords did not provide documentary evidence of the new rent amount which the Tenant took issue with. In the absence of documentary evidence of the new rent amount, I decline to award the Landlords loss of rent based on the new rent amount. I note that the Landlords could have submitted the new tenancy agreement with the name of the new tenant vetted out which would not have revealed any confidential information. Alternatively, the Landlords could have provided other documentary evidence of the rent amount being paid since October of 2021.

In the circumstances, the Landlords are only entitled to loss of rent for half of October of 2021. The Tenant submitted that the Landlords are not even entitled to this; however, I find the Landlords are because they mitigated their loss by re-renting the unit only six days after the Tenant gave back possession of the unit and lost rent they would have received had it not been for the Tenant's breach of the tenancy agreement and section 45(2) of the *Act*. Further, the Tenant was in possession of the rental unit until October 09, 2021, when they returned the keys, and therefore was responsible to pay rent up until October 09, 2021, at the very least.

I note that the Landlords suggested they are entitled to 10 months of rent for the hassle caused by the Tenant ending the tenancy early; however, the Landlords failed to make it clear why they would be entitled to 10 months of rent based on this hassle.

Given the above, the Landlords are awarded \$875.00 for half of October 2021 rent.

#2 Plane tickets for Landlords

The Landlords are not entitled to compensation for plane tickets for them to fly from another province to BC to deal with the Tenant ending the tenancy early. The parties

could, and did, use agents to deal with this tenancy. The Landlords had their father and a friend deal with the Tenant and matters relating to this tenancy. I do not accept that it was necessary for the Landlords to come to BC to deal with the Tenant ending the tenancy early. Further, it is not clear why both Landlords would need to come to deal with the tenancy ending. As well, the situation here, while in breach of the *Act*, is not uncommon or unique such that I find it was necessary or reasonable for the Landlords to fly to BC to deal with the situation.

In my view, landlords who own rental units in another province should expect that they will need agents to act on their behalf in relation to the tenancy. Choosing to fly from another province to BC to deal with the tenancy is not mitigating the loss which is required by the *Act* and RTB Policy Guideline 16.

Further, I do not find it reasonable to expect a tenant to foresee that ending their tenancy early will result in them having to pay for their landlord to fly to BC from another province, particularly in these circumstances where the Tenant had already dealt with an agent for the Landlords and the Landlord by text message.

I note that the Landlords claimed they are “old school” and therefore could not complete things over email or online; however, it appears from RTB records that the Landlords filed the Application online, it is clear the Landlords paid the filing fee online and it is clear the Landlords have communicated by email in relation to this matter.

Given the above, I am not satisfied the Landlords are entitled to compensation for plane tickets and dismiss this claim without leave to re-apply.

#3 Filing fee

Given the Landlords have been partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In total, the Landlords are entitled to \$975.00 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords are issued a Monetary Order for \$975.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 15, 2022

Residential Tenancy Branch