



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- and a monetary order for money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent CW ("landlord") attended the hearing by way of conference call, the tenants did not. I waited until 1:41 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

The landlord confirmed that there was a typographical error in the landlord's application when submitting the names of the tenants. Accordingly, the landlord's application and style of cause were corrected to reflect the correct spelling of the tenants' names as noted on the residential tenancy agreement.

The landlord testified that both tenants were served with the landlord's application for dispute resolution package by way of registered mail on June 9, 2022 to the forwarding address confirmed by the tenants on June 8, 2022. The landlord provided a copy of the email in their evidentiary materials confirming the tenants' correct forwarding address. The landlord provided Canada Post tracking numbers for the packages in their evidentiary materials, which are noted on the cover page of this decision. In accordance

with sections 88, 89 and 90 of the *Act*, I find the tenants deemed served with the landlord's application and evidence on June 14, 2022, five days after mailing. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence before me and the testimony provided for this hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The landlord testified that this tenancy had began on or about September 1, 2020. The landlord testified that the two parties entered into a new fixed term agreement on June 17, 2021. The tenancy agreement was for a 1 year fixed term from September 1, 2021 to August 31, 2022, with monthly rent set at \$2,600.00, payable on the first of the month. The landlord confirmed that they hold a security deposit of \$1,300.00 for this tenancy.

The landlord testified that the tenancy ended on April 30, 2022 after the tenants gave notice on March 31, 2022 that they were moving out before the end of the fixed term. The landlord is seeking a monetary order equivalent to one month's rent as set out in the addendum for liquidated damages, as well as recovery of the filing fee.

Analysis

Section 44 of the *Act* states how a tenancy may be ended:

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.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (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.

I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. The tenancy ended on April 30, 2022, four months before the end of the fixed term tenancy.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

The landlord is seeking a monetary order in the amount of \$2,600.00 for the breaking of the lease.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum...

I have reviewed the written tenancy agreement submitted by the landlord. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenants would be responsible for the amount claimed by the landlord as liquidated damages in the event that the tenants end the tenancy before the end of the fixed term. I am satisfied that the amount is a genuine and reasonable pre-estimate of the losses associated with finding a new suitable tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow the landlord's monetary claim for liquidated damages in the amount of \$2,600.00.

As the landlord's application has merit, I allow the landlord to recover the \$100.00 filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$2.64 is payable as interest on the tenants' security deposit from when the deposit was originally paid, until the date of this decision, February 7, 2023.

Conclusion

I issue a Monetary Order in the amount of **\$1,397.36** in the landlord's favour for the monetary orders granted in the table below:

Item	Amount
Liquidated Damages	\$2,600.00
Filing Fee	100.00
Less Security Deposit Held plus applicable interest	-1,302.64
Total Monetary Order	\$1,397.36

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: February 07, 2023

Residential Tenancy Branch