



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants: MNEVC FFT
Landlords: MNDCL FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

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

The tenants requested:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the Act, I find that both the landlords and tenant were duly served with each other’s Applications and evidentiary materials.

Issue(s) to be Decided

Are the parties entitled to a monetary orders requested?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

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

Both parties submitted a copy of the tenancy agreement which stated that the two parties entered in a 1 year fixed term tenancy agreement beginning on September 1, 2021, and which was to end on August 30, 2022. The parties checked off, and initialed, the portion that stated that the tenancy ends at the end of the fixed term, and the tenants must move out of the residential unit. Monthly rent was set at \$2,500.00, payable on the first of the month. The tenants paid a security deposit of \$1,250.00, which was returned at the end of the tenancy. The tenants moved out on August 30, 2022.

The tenants filed this application requesting compensation under the legislation as they feel that they had moved out in accordance with the vacate clause, and the landlords failed to fulfill their obligations by moving into, and occupying the rental unit as required.

The tenants testified that they did check in with the landlords prior to moving out about the end of this tenancy, and the landlords confirmed that they wanted the tenants to vacate the rental unit at the end of the fixed term.

The tenants sent the following message to the landlords on March 12, 2022 (names removed for privacy):

"I am just curious to know what is your plan about moving back in come August. Given the rental market we have out inif we have to move out, it is better to know it earlier than later cause we need to start our search for a suitable place. Please have a conversation with...about it and let us know.

On our end, we are happy living here. It is a very nice neighbourhood and our kids have adjusted in nicely. The school is really close....

So, if your ask is to move out at the end of August, we need to start looking for a place”.

The landlord responded on the same date: *“we are also thinking about it the last couple of weeks. It seems we will be back to...after August. Hope you will have enough time to find a suitable place by then”.*

The landlord sent a message to the tenants on June 6, 2022 stating the following: *“thank you for bringing this to our attention. I have discussed with...and our plan is still to move back into this September unless anything changes drastically. Majority of our items are in the...house and we moved here for short term only. Hope you understand and good luck on your search”.*

The landlords do not dispute that the tenancy had ended on August 30, 2022, and that they had re-rented the rental unit on November 1, 2022. The landlords noted that RTB Policy Guideline #30 states that “The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable.”. The landlords argued that because no reason was provided on the tenancy agreement, the tenants should not be entitled to compensation.

Furthermore, the landlords argued that the tenants failed to provide written notice that they were moving out, and therefore should provide the landlords with compensation for lost rental income in the amount of \$5,000.00 for the months of September and October 2023.

The landlords testified that their son was 15 years old, and was starting university so the family had to move with him as their son was too young to live on their own. The landlords testified in the hearing that the tenants were aware that their plans might change, and felt that the fixed-term tenancy would revert to a month-to-month agreement at the end of the fixed-term. The landlords argued that if they were found in contravention of the Act for re-renting the rental unit, then the RTB should consider the extenuating circumstances for why they had re-rented the rental unit. In this case, the landlords argued that their son was underage, and could not possibly reside on their own.

Analysis

Section 13.1 of the Residential Tenancy Regulation allows the landlord to include a vacate clause if the landlord, or a close family member of the landlord, intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

As noted in Policy Guideline 50, under section 13.1(2) of the Residential Tenancy Regulation, the circumstances in which a landlord may include a requirement that the tenant vacate a rental unit at the end of a fixed term tenancy agreement is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

A tenant may apply for an order for compensation under section 51.1 of the RTA if the landlord included a vacate clause in a fixed term tenancy agreement and at the end of the fixed term, that landlord or their close family member:

- Have not taken steps to occupy the rental unit with a reasonable period after the tenancy ended, or
- Did not occupy the rental unit for at least 6 months' duration beginning within a reasonable period after the date the tenancy ended (the 6 month period is set by section 13.1(3) of the Residential Tenancy Regulation).

Residential Tenancy Policy Guideline #30 clarifies the requirements for the vacate clause:

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends.

In consideration of the evidence before me, I find that on June 28, 2021, both parties entered into a 1 year fixed-term tenancy agreement that was to begin on August 30, 2022, and the tenancy agreement included a vacate clause, which was initialed by both parties. As noted in this decision, the Act and Regulation clearly stipulates that a vacate clause can only be used in specific circumstances. This requirement came into effect December 11, 2017. As of that date, fixed term tenancy agreements can no longer include a clause requiring a tenant to move out at the end of the term unless:

- The tenancy agreement is a sublease agreement; or
- The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/tenant-notice>

I note that the version of the RTB-1 Form used was a much older version of the form, dated March 2011, as noted on the footer on page 1 of the tenancy agreement. Newer versions of the RTB-1 Form now contains a box where a reason must be provided for why the tenant must vacate, and includes a note that the vacate requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy

Regulation. Regardless of what version was used, as per the legislation, “The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable.”.

As noted on the official and publicly accessible BC Government website, “that means that unless an existing fixed-term tenancy agreement is a sublease agreement or was established for a purpose prescribed in [section 13.1](#) of the Residential Tenancy Regulation, the “vacate clause” cannot be enforced by the landlord. “

(<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/tenant-notice#:~:text=The%20change%20in%20the%20law,be%20enforced%20by%20the%20landlord.>)

In this case, the landlords did not indicate a reason on the form used by the two parties, which makes the vacate clause unenforceable. The legislation changed in 2017, restricting the landlord’s ability to use the vacate clause to only certain circumstances in order to protect tenants. As noted in the news release dated October 26, 2017, “the new legislation will mean landlords can no longer use the loophole to bypass annual rent control, meaning renters will now be protected against massive rent hikes at the end of a lease.” (<https://news.gov.bc.ca/releases/2017MAH0010-001815>) .

What this new legislation meant was that the landlord would now only be allowed to use a vacate clause in specific circumstances, as outlined in section 13.1 of the Regulation, and this reason must be specified on the tenancy agreement. If the landlord failed to specify the reason on the tenancy agreement, the vacate clause would not be enforceable. What the term “enforceable” means, as contemplated by the legislation, is that in the case where the tenant did not vacate the rental unit in accordance with the vacate clause, the landlord would not be able to obtain an Order of Possession pursuant to section 51(2)(c) of the Act. The term enforceable does not mean that the landlord would be relieved of their obligations under the Act and tenancy agreement. As expressed in the press release, the spirit of this new legislation is to protect tenants, and was not meant to be used as a tool by a landlord to avoid the Act.

The *Residential Tenancy Act* provides by section 5 that:

This Act cannot be avoided

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, the onus was clearly on the landlords to provide a reason for why the tenants must vacate the rental unit at the end of the fixed term. The landlords failed to comply with this requirement, and now that the tenants have moved out and are applying for compensation, the landlords are relying on their own error or omission as justification for why the tenants should not be entitled to compensation under section 51.1 of the Act. I find this argument amounts to an attempt to avoid the Act.

I have considered whether the landlords may have mistakenly selected the vacate clause on the tenancy agreement, but I find that the evidence clearly shows that the landlords had expected that the tenants would vacate the rental unit by August 30, 2022, as per the vacate clause on the tenancy agreement. The tenants had proactively checked in with the landlords in March 2022 about the landlords' plans and expectations, to which the landlords had replied that they thought they would be back after August. The landlords confirmed on June 6, 2022 that *"our plan is still to move back into this September unless anything changes drastically. Majority of our items are in the...house and we moved here for short term only. Hope you understand and good luck on your search"*.

I find the landlords' correspondence with the tenants clearly show that the vacate clause was in effect, and that the tenants were expected to move out on August 30, 2022 in compliance with the clause. Although the vacate clause was not enforceable, the tenants complied with the landlords' request, and moved out on August 30, 2022. By moving out as requested by the landlords, and in compliance with the vacate clause, I find that this action triggered the tenant's right to apply for compensation under section 51.1 of the Act.

Section 51.1 of the Act reads as follows:

51.1 (1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or

(b)the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

(2)The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from

(a)satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or

(b)using the rental unit in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

As noted in RTB Policy Guideline #50, "Section 51.1 was brought into force by Regulation on July 11, 2022. In general, a law does not apply to previous circumstances unless required by the legislation. However, amendments can apply to ongoing circumstances.

Section 51.1 can apply in circumstances where a fixed term tenancy agreement was entered into before section 51.1 was brought into force, but the fixed term tenancy agreement has not yet ended." In this case, although the two parties entered into the tenancy agreement before section 51.1 was brought into force on July 11, 2022, the fixed term had not yet ended. Therefore, the provisions of section 51.1 of the Act would apply in this case, and I will consider the tenants' application for compensation pursuant to section 51.1 of the Act.

It is undisputed that the landlords did not occupy the home for at least six months as required, within a reasonable period after August 30, 2022. Instead, the landlords re-rented the home as of November 1, 2022. The legislation allows me to excuse the landlord from paying the tenants the required compensation if there were extenuating circumstances that prevented the landlords from fulfilling their obligations.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the *Act*.

An arbitrator may excuse a landlords from paying compensation if there were extenuating circumstances that stopped the landlords from accomplishing the purpose

or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlords to pay compensation. Some examples are:

- A landlords ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlords ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlords of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlords ends a tenancy to occupy a rental unit and they change their mind.*
- A landlords ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I find that the reason provided by the landlords for failing to occupy the home within a reasonable amount of time does not meet the definition of extenuating circumstances as set out in the *Act* and *Policy Guidelines*.

The landlords were aware that their child would be attending university, and would require their support as their child was a minor. As a university program could possibly take a few years to complete, and given the age of their child, I find that the landlords should have anticipated that they would need to support their child for longer than a one year term. I do not find this explanation meets the definition of extenuating circumstances as the circumstances could have been foreseeable and anticipated.

Additionally, I find that the tenants had provided the landlords with ample time and opportunity to change their minds, and extend the tenancy beyond the fixed-term, but the landlords had responded that they wanted the tenants to move out at the end of the fixed term.

Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51.1 of the *Act* for the landlords' noncompliance. I issue a monetary award to the tenants equivalent to 12 times the monthly rent.

As the tenants were successful with their application, I find that the tenants are entitled to recover the filing fee paid for their application.

The landlords filed their own application requesting compensation as they feel that the tenants failed to give a proper notice to end tenancy in accordance with the legislation.

Section 44 of the *Residential Tenancy Act* states the following about how a tenancy may end:

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.

As noted earlier, I find that this tenancy ended pursuant to section 44(1)(b) of the Act. As this tenancy had ended pursuant to a vacate clause, the tenants are not required to provide the landlords with a separate written notice. Furthermore, as noted earlier, I find that the landlords were not only aware that the tenants would be moving out at the end of the fixed term, the landlords had made clear this expectation in their correspondence

to the tenants. I find that this tenancy was ended in accordance with the Act, and there the landlords' application for compensation is dismissed without leave to reapply.

As the landlords were not successful with their claim, their application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$30,100.00 in the tenants' favour in compensation for the landlords' failure to comply with the *Act*, plus recovery of the filing fee for their application.

The tenants are provided with this Order in the above terms and the landlords(s) must be served with **this Order** as soon as possible. Should the landlords(s) 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: October 27, 2023

Residential Tenancy Branch