



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1089131 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDCL-S, MNRL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for monetary loss or money owed 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

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agents attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

The landlord's agents testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on or about July 12, 2020 by way of registered mail. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence five days after its registered mailing.

Issue(s) to be Decided

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

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 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 this application and my findings around it are set out below.

This fixed-term tenancy was to begin on June 1, 2020, with monthly rent set at \$1,900.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$950.00 for this tenancy, which the landlord still holds. The landlord submitted a copy of the written tenancy agreement which was signed by both parties.

The landlord testified that the tenants were to move in on June 1, 2020, but an altercation took place, after which the tenants refused to continue with the tenancy. The landlord testified that the police were called, and the tenants demanded their security deposit back and that the landlord allow them to terminate the fixed-term tenancy.

The landlord advertised the home for rent, and was able to re-rent the home on June 12 2020. The landlord is seeking a monetary order for the loss of rental income for the period of June 1, 2020 through to June 11, 2020, 1 hour of lost wages in the amount of \$30.00 as SC had to leave work on June 1, 2020 to assist in diffusing the situation, \$33.60 for lock and key replacement as the tenants failed to return the keys, and recovery of the filing fee.

As a formality, as the tenants had already terminated the tenancy, the landlord presented the tenants with a Mutual Agreement to End Tenancy, which was eventually signed by the tenants on June 26, 2020 confirming that the tenancy had ended on June 1, 2020. The landlord submitted a copy of this document in their evidentiary materials.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

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.

The landlord provided sworn testimony that the tenants ended this tenancy in a manner that does not comply with the *Act*, as stated above. The tenants did not obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. Although a Mutual Agreement to End Tenancy was signed by both parties on June 26, 2020, I accept the landlord's sworn testimony that this tenancy was already terminated by the tenants on June 1, 2020 as they had refused to move in. I find that this document was a formality by the landlord to confirm that the fixed-term tenancy was no longer in effect as the tenants had already confirmed that they did not wish to continue this tenancy.

Section 16 of the *Act* states the following:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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 terminated this tenancy contrary to

Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to mitigate their losses as required by section 7(2) of the *Act* by re-renting the home for June 12, 2020. I am satisfied that as a result of the tenants' contravention of the *Act*, the landlord suffered a monetary loss of rent for the period of June 1, 2020 through to June 11, 2020. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$696.67 in rental income due to the tenants' failure to comply with sections 44 and 45 of the *Act*.

I accept the landlord's sworn testimony that the tenants failed to return the keys, and as a result the landlord suffered a monetary loss in the amount of \$33.60 for lock and key replacement.

I have considered the landlord's application for lost wages. Although I am sympathetic to the fact that the landlord's agent had lost \$30.00 in wages to attend to the matter, I find that this was a business decision made by the landlord, and not necessarily a direct loss due to the tenants' contravention of the *Act*. For this reason, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I issue the following monetary awards in the landlord's favour which allows a monetary award for damage and losses caused by the tenants. The landlord is also authorized to recover \$100.00 for the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim as set out in the table below.

Item	Amount
Loss of Rental Income for June 1, 2020- June 11, 2020	\$696.67
Lock & Key Replacement	30.00
Filing Fee	100.00

To be deducted from security deposit	\$826.67
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I dismiss the remainder of the landlord's monetary claim without leave to reapply.

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: November 18, 2020

Residential Tenancy Branch