



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL FFL

Introduction

The landlord seeks to recover money for unpaid and lost rent, pursuant to sections 26 and 67 of the *Residential Tenancy Act* (“Act”). They would also like the tenants to pay for cost of filing this application for dispute resolution, pursuant to section 72 of the Act.

The landlord, an agent for the landlord, and one of the tenants attended the hearing; the tenant explained that the other tenant was unable to participate in the hearing as they currently reside in Tunisia.

Preliminary Issue: Service and Admissibility of Evidence

The landlord and the landlord’s agent testified that they served documentary evidence on the tenants.

The tenant testified that he served his documentary evidence on the landlord by having a friend print the evidence and then deliver this printed package to the landlord’s mailbox. The landlord and agent stated that they never received anything from the tenants. In answer to a few questions I asked, the tenant explained that he had not submitted any photograph of the package being placed in the landlord’s mailbox. Nor did he provide a copy of any signed notice of service document. (That is, a document signed by the person serving the evidence that they in fact served the documentary evidence as stated.) While the tenants did, in fact, provide and submit copies of their evidence to the Residential Tenancy Branch, it does not appear that the landlord ever received the tenants’ evidence.

The [*Rules of Procedure*](#), under the Act, which provide a type of legal navigation for residential tenancy disputes, have the following objective: to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. There are rules regarding each party’s obligations as to how they serve evidence on the opposing party. Rule 3.16, “Respondent’s proof of service,” states the following:

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

In this dispute, I cannot find, without any supporting evidence, that the tenants served the landlord with their evidence. The opportunity to submit evidence, including evidence of the service of evidence, ended seven days before the hearing. In reviewing the file, the tenants were diligent in submitting a substantial quantity of evidence, but they were, for reasons not fully explained, remiss in including anything proving the service of such evidence to the landlord.

A fundamental principle of natural justice and procedural fairness is that each side to a dispute must be given an opportunity to respond to the evidence against them. Here, the landlord did not have the tenants' evidence with which the tenants intended to use against them. As such, it would be fundamentally unfair for me to consider the tenants' evidence without the landlord having a full opportunity to review and respond to this evidence. For these reasons, the tenants' documentary evidence, therefore, will not be admitted or considered in this decision. In making any findings of fact only the tenant's oral evidence, or testimony, will be considered and accepted.

Issues

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying, and admitted in compliance with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began September 1, 2020 and ended December 15, 2020. Monthly rent, which was due on the first day of the month, was \$2,100. The tenants paid a security deposit, which has since been returned and is not an issue in this matter. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The tenancy was a fixed term tenancy that was slated to end on August 31, 2021. However, the tenancy ended when the tenants vacated the rental unit on December 15,

2020. The landlord's agent testified that the landlord was served with a letter from the tenants on November 16, 2020 in which they stated their intention to end the tenancy effective December 15, 2020. While the tenants expected and hoped to have the parties mutually agree to end the tenancy on this date, the landlord did not accept the tenants' notice.

On December 15, 2020, after a condition inspection report was completed, the tenants vacated the rental unit. According to the agent, though, the tenants never paid rent for December. It is this unpaid rent in the amount of \$2,100.00 that the landlord seeks to have recovered.

The tenant testified that due to several issues that he and his co-tenants had during the tenancy, they ended the tenancy early. He argued that the landlord violated their right to quiet enjoyment on several occasions, that they denied them access to high-speed internet, that a parking spot included in the tenancy was not in fact available, and that there was a faulty, inoperable toilet for four to seven days. The tenant referred to several text messages that, as noted above, cannot be considered.

In addition, the tenant argued that, despite the landlord being given notice from the tenants that they intended to end the tenancy on December 15, the landlord did not try to find new renters until the day the tenants moved out.

In response, the landlord's agent testified that the toilet (for which a plumber was never really able to determine the problem) was replaced "the next day." That is, the toilet was replaced on the second day of the tenancy, and, that the tenant's testimony is not true. He continued and explained that the internet was not "throttled" at any time by the landlord. Rather, when the internet was down, it was a shared problem; both the landlord and the tenants were on the same network.

It is noted that while the tenancy agreement includes internet as a service provided, there is no specification as to what the internet speed must be. As for the parking, while parking space for one vehicle is included as a term of the tenancy agreement, the agent explained that the tenant agreed to park his pick-up truck on the street because there was not a lot of room in the assigned parking spot.

Analysis

The standard of proof in a dispute is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the landlord's claim comprises two parts: (1) unpaid rent for December 1 to 15, and (2) loss of rent for December 16 to 31, 2020.

Unpaid Rent Portion of Claim

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to not pay rent. Under the Act there are only four instances when a tenant may not pay the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

Section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act. Section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts. Section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase. Finally, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

Having considered the tenant's argument and submissions, I find that the tenants had no legal right under the Act to not pay rent for the period that they occupied the rental unit from December 1 to December 15, 2020. That they took issue with the landlord's many alleged breaches of the tenancy agreement is legally irrelevant in terms of their obligation to pay rent. Therefore, the tenants were required to pay rent for the time that they occupied the rental unit.

Loss of Rent Portion of Claim

The parties were in a fixed term tenancy. A fixed term tenancy may only end in accordance with [section 45\(2\)](#) of the Act, and in no case before the agreed-to end of tenancy date as stated in the tenancy agreement. There is, however, one exception to this. Section 45(3) of the Act states that

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 not explicit (he never referenced this section), this is basically the tenants' position. Namely, it is because the landlord failed to provide internet, a working toilet, a parking spot, and quiet enjoyment, that the tenants had the right to end the tenancy early. But there is one problem with the argument: there is no supporting evidence.

And so, after carefully considering the parties' arguments, testimony, and admissible documentary evidence, I must find that the tenants ended the fixed-term tenancy in breach of the Act and that they had no legal right to end the tenancy. They breached their contract, and consequences must follow.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for loss that results. Further, a party claiming compensation for loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Here, the tenants breached both the Act and the tenancy agreement by ending the fixed-term tenancy early. And, but for the tenants' breach of the Act and the tenancy agreement, the landlord would not have suffered a loss of the remainder of the rent for December 16 to 31. Finally, I find that the landlord did what was reasonable in minimizing the loss of rent by starting to look for a new tenant on the day that the tenants vacated the rental unit. The tenant's argument that the landlord ought to have taken steps to minimize their loss as soon as they received their notice to end the tenancy (on November 16 – which is, I note, not even a month before the tenants planned on leaving) is not persuasive.

The landlord's agent argued that, as far as they were concerned, the tenancy was not ending on December 15. Thus, why would they start looking for a new tenant when,

from their perspective, the tenancy would last beyond December 15? Indeed, I find it rather disingenuous of the tenant to argue that the landlord should have taken earlier steps to minimize a loss when it was the tenants who breached the Act, the tenancy agreement, and who deliberately chose not to pay any rent for any of December.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for rent in the amount of \$2,100.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee.

Conclusion

I hereby grant the landlord's application.

I hereby grant the landlord a monetary order in the amount of \$2,200.00, which must be served on the tenants. A copy of this order is issued to the landlord, in conjunction with this Decision. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 18, 2021

Residential Tenancy Branch