



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by general manager, LT and tenant relations employee, LG. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord’s Notice of Dispute Resolution Proceedings package and the landlord acknowledged service of the tenant’s evidence. Both parties stated they had no concerns with timely service of documents and were ready to proceed.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Can the landlord retain the tenant’s security deposit?

Should the filing fee be recovered?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The 8-month fixed term tenancy began on November 1, 2021, set to expire on June 30, 2022. Rent was set at \$900.00 per month, payable on the first day of each month. A security deposit of \$450.00 was collected at the commencement of the tenancy which the landlord continues to hold.

The landlord testified that their society provides safe, affordable housing for seniors and people with disabilities, helping them to live independently. This tenant expressed a desire to move into their building back in April 2021 and insisted on a top floor unit. The landlords testified that they were hesitant to rent to this tenant as there were "red flags", however these were not described in detail. They agreed to an 8-month fixed term tenancy after interviewing the tenant and advising him that he cannot move into a different unit after taking possession of the one he viewed. He agreed to the terms.

On February 9, 2022, the tenant called the landlord advising he did not want to continue his tenancy. The landlord agreed to mutually end the tenancy provided that the tenant provide them with a money order for \$900.00, representing March 2022's rent payable in addition to allowing the landlord to retain the tenant's security deposit of \$450.00.

On February 14, 2022, the tenant sent the landlord a letter with the header, "Terminating Lease of the Rental unit (address)". The letter goes on to name deficiencies noted by the tenant during the tenancy which include noise from a fan installed on the roof; a noisy valve located in his closet and a disagreeable aromatherapy scent in the building. The February 14th letter was followed up by another from the tenant on February 28, 2022 whereby the tenant terminates the lease on that date.

The landlord testified that on February 24th, they attempted to do a condition inspection report with the tenant however the issue of the return of the security deposit became a point of contention. The tenant signed the document in the landlord's office on February 28th and a copy is provided as evidence. The tenant's forwarding address is noted on the condition inspection report.

The landlords testified that they interviewed a prospective tenant for the unit on March 22nd and that person took over occupancy of the rental unit on May 4, 2022. The landlords did not remember when they started advertising the unit for rent and does not have a recollection of how many applicants applied to live in the unit after the tenant vacated it. The landlord testified that they are very selective in choosing tenants.

The tenant gave the following testimony. He acknowledges signing the tenancy agreement effective November 1, 2021 however he never moved into the unit. He went there occasionally to clean it, but due to chronic health conditions, he never moved in. He continued to reside at his last place of residence, paying rent in both locations. As soon as he got better, he arranged movers and started preparing to move but discovered "deficiencies" in the building. These include a loud fan on the roof, a valve that makes horrible loud noises and a neighbour who uses aromatherapy scents which the tenant finds disagreeable. The landlord tried to fix these "deficiencies" but the fixes were not to the tenant's liking and he chose to move out. The tenant acknowledges that he never filed an application to the Residential Tenancy Branch seeking an order that the landlord fix the deficiencies or provide him with quiet enjoyment of the rental unit.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

The landlord seeks compensation due to the tenant's breaching of section 45(2)(b) of the Act for giving a notice to end tenancy to end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy.

Despite the tenant's argument that there are "deficiencies" with the tenancy and that the tenancy agreement is "null and void due to several material breaches", the tenant does not have any right under the Act to end a fixed term tenancy before the end of the fixed term. The proper recourse for a tenant to follow if he believes a landlord is breaching the Act, regulations or tenancy agreement is to seek an order from the director that the landlord comply with the Act under section 62, provide quiet enjoyment of the rental unit under section 28 or repair and maintain the unit under section 32. The tenant acknowledged he did not seek an order of any sort from the Residential Tenancy Branch. I find the tenant in breach of section 45 of the Act by ending the fixed term tenancy before the specified end date.

I accept the evidence before me that on February 14, 2022, the tenant gave the landlord written notification that he was going to end the tenancy on February 28th. This is clearly in breach of section 45 of the Act, as the effective date of his notice to end tenancy is earlier than June 30, 2022, the end date of the fixed term in the tenancy agreement.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states at part C:

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 rerenting 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.

Here, the landlord seeks full rent until the end date of the fixed term tenancy, a period of 4 months. First, given the low vacancy rate in the Greater Vancouver, I find the landlord's rationale for being unable to find a suitable tenant for an affordable rental unit to be both unreasonable and unlikely. Further, in testimony, the landlords were unable to provide details about when they started advertising the rental unit for rent; how many applicants applied for the rental unit or give satisfactory testimony about why they didn't interview for a tenant until 22 days after the tenancy with this tenant ended. The landlords also chose a tenant who could not commence tenancy until May 4th, causing a further month of no rent.

Given these facts, I find that the landlord has failed to do whatever is reasonable to minimize the damage or loss (point 4 of the 4-point test and section 7(2) of the Act). I find the landlord should not be entitled to the entire 4-month compensation as sought but should be entitled to compensation of a month's rent for the tenant's breach of section 45 of the Act. I award the landlord \$900.00 in compensation pursuant to section 67 of the Act.

In their application, the landlords state that the tenant left the apartment prior to the end of the lease period, retaining the security deposit would help off-set rent still outstanding and also recoup the landlord's filing fee. In accordance with the offsetting provisions of

section 72 of the Act, the landlord may retain the tenant's entire security deposit in partial satisfaction of the monetary order.

As the landlord's application was successful, the landlords may recover the \$100.00 filing fee from the tenant.

Conclusion

I award the landlord a monetary order in the amount of \$550.00.

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 24, 2022

Residential Tenancy Branch