



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNL, MNDC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement. The tenants also seek an Order for the landlord to comply with the *Act*, regulation or tenancy agreement. The tenants have now moved from the rental property and withdraw the remainder of their application.

The tenants served the landlord with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to compensation for damage or loss under the *Act* and if so, how much?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?



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Background and Evidence

This tenancy started on July 01, 2002 and ended on October 08, 2009. This was a month to month tenancy and the tenants paid rent of \$775.00 per month which was due on the first of each month. The tenant's security deposit has been returned to them by the landlord.

The tenants testify that the landlord served them with a Two Month Notice to End Tenancy on July 27, 2009 to vacate the rental property on October 01, 2009. The reasons given on the Notice were that the landlord or a close family member would be occupying the rental property and that permits were in place to carry out renovations of the rental property. The tenants claim that the landlord has not used the rental property for this purpose. They claim that the landlord wanted to split the property, renovate the basement and re-rent the two areas separately. They claim the landlord did offer them the top floor of the property to continue the tenancy but the tenants did not want to just rent this area as their tenancy agreement for the past seven years was for the whole property.

The tenant's testify that the landlord has advertised the top floor of the property and has now rented this to new tenants at a higher rent and the landlords' family member has not moved into the basement.

The tenants are claiming two months rent in compensation for the whole property not being used for its intended purpose, \$100.00 for gas for the moving truck and \$450.00 in other moving expenses.

The landlords dispute the tenant's testimony. They state the landlords' family member will be moving into the basement of the property when the renovations are complete. They confirm that the top floor of the property has been rented to new tenants. The landlord testifies that she offered the top floor to the tenants but they refused the offer.

Analysis

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I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenants had a tenancy agreement for the whole property. Section 14 of the Act states:

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;

Section 27 of the Act states:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

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(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find the landlord has not complied with section 27 of the *Act*. The landlord wanted to alter a material term of the tenancy agreement without the tenant's agreement and wanted to restrict the tenant's use of the whole property by offering them the top floor of the house as their residence. I further find as the tenants had used the whole property as their residence under their tenancy agreement then the landlord would have had to use the whole property for a close family members use with regards to the Two Month Notice to End Tenancy.

I find the landlord has rented out the top floor of the property to new tenants who are not close family members and the basement remains empty at this time. Therefore, pursuant to section 51 of the *Act* I find the tenants are entitled to compensation from the landlord to the amount equivalent to two months rent.

I find the tenants have not provided sufficient evidence to support their claim for \$100.00 for gas for the moving truck and \$450.00 in moving expenses. Therefore, I dismiss this section of their claim without leave to reapply.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 12, 2009.

Dispute Resolution Officer