



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, MNSD, OLC, LRE, FF, O

Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord 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 and to cross-examine one another. The female tenant who attended this hearing (the tenant) confirmed that on September 30, 2012, the male tenant was handed the landlord's written notice to end this tenancy by October 31, 2012. Although this notice was not on the prescribed form, the parties agreed that this tenancy ended on the basis of the landlord's September 30, 2012 notice. The landlord testified that both landlords received the tenant's original and revised dispute resolution hearing packages sent by registered mail on October 12, 2012 and subsequently handed to the landlord(s). I am satisfied that the parties received all of the documents outlined above and were prepared to discuss the issues identified in the tenants' application at this hearing.

At the commencement of the hearing, the parties confirmed that the tenants vacated the rental unit by October 31, 2012. Since this tenancy has ended, the tenant withdrew the tenants' applications for:

- more time to make an application to seek cancellation of the landlord's 1 Month Notice;

- to seek cancellation of the 1 Month Notice;
- an order to suspend or set conditions on the landlord's entry to the rental unit; and
- an order to be issued against the landlord.

The tenants' applications for the above four outcomes are withdrawn as is the tenants' application to recover the filing fee from the landlord, as this fee was waived. The tenant confirmed that the only issue the tenants wanted to pursue was their application for a monetary award for losses arising out of this tenancy and the return of their security deposit.

At the commencement of the hearing, I asked for clarification of the corporate name of the respondent. The landlord said that the tenants had misspelled the respondent's corporate name and this name was corrected with the agreement of both parties to the name cited above.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for damage and loss arising out of this tenancy? Are the tenants entitled to recover their security deposit from the landlords?

Background and Evidence

This tenancy agreement was signed by the parties on February 3, 2012 and February 15, 2012 for a three-month fixed term tenancy that began on March 1, 2012. Monthly rent was set at \$785.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$350.00 security deposit paid on March 1, 2012.

Although the tenancy agreement called for the payment of a \$350.00 pet damage deposit, the tenant testified that no such payment was made to the landlords.

The parties agreed that a joint move-in condition inspection was conducted on February 22, 2012 and a joint move-out inspection occurred on November 3, 2012. Copies of the inspection reports have been provided to the tenants. The tenancy ended by October 31, 2012, by which time the tenants had vacated the rental unit. The parties agreed that November 2012 rent was paid by the Ministry of Social Development (the Ministry) on behalf of the tenants.

The tenants' amended application for a monetary award of \$2,518.52 included the following items listed in their October 18, 2012 Monetary Order Worksheet:

Item	Amount
Moving Estimate	\$1,045.00
Packing/Cleaning	200.00

Mail Forwarding	60.00
Gasoline to Find New Accommodations	20.00
Refund of Rent for October 2012 due to Loss of Quiet Enjoyment	780.00
Return of Security Deposit	390.00
Mailing Costs	23.52
Total Monetary Award Requested	\$2,518.52

At the hearing, the tenant testified that the Ministry had reimbursed the tenants for their move-in and move-out costs. She removed this item from the tenants' requested monetary award. She maintained that because the landlord should have known that the basement rental unit was illegal, the tenants should be able to recover all of the items listed above with the exception of their request for a refund of their rent for October 2012. She testified that they experienced ongoing noise problems from the tenants who lived above them during October 2012, and that this noise and the landlord's attempts to evict them by the end of October 2012 was stressful to the tenants. The tenants requested a full rebate of their rent for October 2012.

The landlord entered oral and written evidence that the landlord issued the notice to end tenancy after the municipality contacted them about this basement suite. Until the municipality contacted the landlord, no determination had been made by the municipality that the rental unit was an illegal suite. The landlord entered written evidence to confirm that the municipality issued the landlord a September 27, 2012 letter advising the landlord that an Illegal Suite Complaint had been received by the municipality about this rental unit. The landlord was advised that an inspection would need to be arranged and that enforcement action would be taken to have it removed if the suite were illegal.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord did not issue the notice to end this tenancy on the correct Residential Tenancy Branch (RTB) form. Based on the evidence provided by the landlord, the landlord's notice to end this tenancy may have been slightly premature. However, once the inspection of the premises occurred, there was no question that the municipality had commenced action that would lead to an end to this tenancy. While it is possible that the tenants could have remained in the rental unit beyond October 31, 2012, it appears that the tenancy would have ended shortly thereafter.

The tenants have not provided sufficient evidence to support their claim that the landlords should be held responsible for all of the tenants' moving costs. The tenants have not supplied evidence to demonstrate that the landlords had received anything from the municipality that would advise the landlords that the rental unit was an illegal suite that would attract enforcement action by the municipality.

In addition, I find that the tenants did not supply adequate receipts to support their claim for a monetary award. Their application was submitted before they moved. Most of these costs were subsequently provided to them by the Ministry. I find that the tenants have failed to demonstrate their entitlement to any monetary award for costs associated with their move from the rental unit. The tenants' application for reimbursement of their mailing costs is not an expense that is eligible for compensation under the *Act*.

I do not find that the tenants are entitled to a monetary award for their loss of quiet enjoyment during the month of October 2012. While it is clear that they were involved with an ongoing dispute with the tenants who lived above them, I do not find that the tenants have provided sufficient evidence, either written or oral, that would entitle them to any form of rent reduction for their alleged loss of quiet enjoyment of their rental unit during this period. I do not find that they are entitled to a monetary award for stress resulting from the landlord's actions in ending this tenancy before the tenants wished to leave. The tenants applied to cancel the landlord's notice to end this tenancy, but decided to vacate the rental unit by the effective date identified by the landlord's in their notice to end this tenancy. For these reasons, I dismiss those portions of the tenants' application for dispute resolution that were not withdrawn by the tenant before the hearing commenced without leave to reapply, with the exception of the tenants' application to obtain a return of their security deposit.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord

must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that the tenants' original application to obtain a return of their security deposit was premature. The tenants have not provided evidence that they or the Ministry (on the tenants' behalf) have provided the landlord with the forwarding address in writing where the security deposit for this tenancy can be returned. Therefore the landlord's obligation to return it has not yet been triggered. Under these circumstances, I dismiss the tenants' application to obtain a return of their security deposit with leave to reapply.

Conclusion

The tenants' applications for the following are withdrawn:

- more time to make an application to seek cancellation of the landlord's 1 Month Notice;
- to seek cancellation of the 1 Month Notice;
- an order to suspend or set conditions on the landlord's entry to the rental unit; and
- an order to be issued against the landlord.

I dismiss the tenants' application to obtain a return of their security deposit with leave to reapply. The remainder of the tenants' application for a monetary award is dismissed 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 14, 2012

Residential Tenancy Branch

