



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords 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 landlords' representative testified that she was incorrectly identified as a respondent in the tenants' application. She said that the male respondent is her father and that he was available if necessary to participate in this hearing. She said that her father had authorized her to act as his agent in this matter. She testified that the other owner of the rental property is her mother, who was not identified as a respondent in the tenants' application. The female tenant (the tenant) said that she believed that the female landlords' name was as identified on the tenants' application, but had no specific information to confirm that the tenants had correctly identified the female landlord in their application. On the basis of this evidence, I advised the parties that I would only consider the tenants' request for a monetary award from the male landlord, who was correctly identified as one of the respondents in the tenants' action.

The landlord's agent (the agent) testified that she and her father received a copy of the tenants' dispute resolution hearing package sent by registered mail by the tenants on October 12, 2012. I am satisfied that the tenants served this package to the respondents in accordance with the *Act*.

Issues(s) to be Decided

On what basis did this tenancy end? Are the tenants entitled to a monetary award for losses or damages arising out of this tenancy? Are the tenants entitled to recover their filing fee for this application from the male landlord?

Background and Evidence

This periodic tenancy commenced on February 1, 2010. Monthly rent by the time the tenants vacated the rental unit by September 30, 2012 was set at \$1,800.00, payable in advance on the first of each month. The parties agreed that the landlords returned the tenants' \$900.00 security deposit paid on January 24, 2010, less their final month's utility bill.

The tenants' application for a monetary award of \$4,186.24 included the following items:

- 2 months rent at \$1,800.00 per month for the landlords' failure to move into the rental unit following the issuance of their oral notice to end tenancy for landlords' use of the premises;
- \$586.24 to reimburse the tenants for their costs in transporting their family pet to family members in another province.

The tenants entered oral and written evidence that on August 31, 2012 the landlords gave them a "30 day" oral notice to end this tenancy. They maintained that the landlords required them to leave by September 30, 2012 to enable the landlords to occupy the rental property themselves. As they believed that the landlords had in fact given them a notice to end tenancy for landlord's use of property (i.e., an oral 2 Month Notice to End Tenancy for Landlord's Use of Property), the tenants requested a monetary award equivalent to two month's rent. The tenants asserted that the landlords did not in fact move into the rental unit after September 30, 2012, but re-advertised the premises for rental shortly thereafter. The tenants also submitted a copy of a Mutual End to Tenancy Agreement form presented to them by the landlords on August 31, 2012. While one of the landlords signed this Mutual End to Tenancy Agreement, the tenants refused to sign it.

The parties agreed that they had an oral agreement whereby the landlords declined to charge rent for the last month of this tenancy (i.e., September 2012), provided the tenants with limited moving costs and returned the tenants' security deposit less the unpaid utility bill. The parties agreed that they abided by the terms of this oral agreement and that the tenants did not pay any rent for September 2012, as per the terms of that agreement.

Analysis

Section 51 of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or*

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement...

While the tenants maintained that they received an oral notice to end tenancy for landlord's use of the property, this notice would have to be a written 2 Month Notice to End Tenancy for Landlord's Use of Property (a 2 Month Notice) pursuant to section 49 of the Act.

Section 44 of the Act establishes the ways that a tenancy may end. Section 44(1)(v) of the Act allows a tenancy to end if a landlord issues a notice to end tenancy for landlord's use of the property pursuant to section 49 of the Act. The following provisions of section 44(1) of the Act also allow a tenancy to end under the following circumstances:

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

(d) the tenant vacates or abandons the rental unit;

Section 52(e) of the Act reads in part as follows:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must...*

(e) when given by a landlord, be in the approved form...

Based on the undisputed evidence before me, the landlords did not issue any written notice to end tenancy by September 30, 2012 on an approved form as required by the

Act. The landlords did prepare and sign a written Mutual End to Tenancy Agreement, which would have ended this tenancy under section 44(1)(c) of the *Act* had the tenants signed that Agreement. There is undisputed evidence that the tenants did not sign that Agreement. This tenancy appears to have ended on the basis of the oral mutual agreement to end this tenancy by September 30, 2012, the terms of which were implemented by both parties. As an oral mutual agreement to end tenancy has no legal standing under the *Act*, I find that the tenancy ended in accordance with section 44(1)(d) of the *Act* when the tenants vacated the rental unit and the landlords took possession of the premises.

Given my finding that this tenancy did not end on the basis of any legal notice to end tenancy issued by the landlord under section 49 of the *Act*, I find that the tenants are not entitled to any form of additional compensation from the landlords pursuant to section 51 of the *Act*, or any other section of the *Act*. I find that the landlords abided by the terms of their informal agreement to end this tenancy and the tenants are not entitled to any additional compensation beyond what they have already received from the landlords.

Conclusion

I dismiss the tenants' application in its entirety 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: January 04, 2013

Residential Tenancy Branch

