



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 landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:17 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female tenant testified that the tenants sent the landlord a copy of their dispute resolution hearing package, including notice of this hearing, by registered mail on April 26, 2013. The tenant provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the tenants served the landlord with a copy of their dispute resolution hearing package in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for damage or losses arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy commencing on October 1, 2012 was scheduled to end by September 30, 2013. Monthly rent was set at \$1,550.00, payable in advance on the first of each month, including utilities. The landlord continues to hold the tenants' \$800.00 security deposit.

The male tenant said that the landlords requested the payment of the first six monthly rent cheques at the beginning of this tenancy. The tenants vacated the rental unit by April 16, 2013.

The tenants entered written evidence and sworn testimony that on or about March 14, 2013, the female landlord gave the tenants oral notice that they were to end their tenancy because they were using too much power. The tenants entered into written evidence a copy of the March 15, 2013 written notice from the landlord requiring the tenants to vacate the rental unit within 10 days, by March 25, 2013.

The tenants applied for a monetary award of \$4,500.00, an amount that they selected to compensate them for their moving costs, the costs of looking for alternate accommodations and for the stress caused to them as a result of the landlord's insistence that they end their tenancy early.

Analysis

The *Act* requires a landlord to end a tenancy using the proper Residential Tenancy Branch (RTB) forms. A landlord cannot end a tenancy by issuing his or her own letter and cannot end a tenancy within 10 days for anything but unpaid rent.

I find that there was no legal basis to the landlord's attempt to end this tenancy. As the landlord did not issue a notice to end tenancy using the proper RTB forms or in accordance with the *Act*, I find that the tenants did not have to end their tenancy when they did. There is evidence that the tenants objected to the landlord's illegal attempt to evict them before the end of their fixed tenancy agreement. Although the tenants vacated the rental unit, they were aware that they did not have to move because the landlord had not taken legal measures to end their tenancy.

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. 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.

In this case, other than the tenants' sworn testimony, they provided no evidence that they incurred any actual losses resulting from the landlord's actions. They did not

provide any receipts to document their moving costs or any other costs they incurred as a result of the landlord's actions.

Although the tenants may have felt pressured to end their tenancy early, they did not apply to cancel any notice to end their tenancy that was provided to them by the landlord.

Under these circumstances, I find that the tenants have not demonstrated their entitlement to any monetary award for losses arising out of this tenancy. I dismiss their application for dispute resolution for a monetary award for losses arising out of this tenancy without leave to reapply. As the tenants have been unsuccessful in their application, they bear the cost of their filing fee.

Conclusion

I dismiss the tenants' application 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: July 17, 2013

Residential Tenancy Branch

