



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that the landlord handed them the 1 Month Notice on March 17, 2014. The male landlord (the landlord) confirmed that the landlords received the tenants' March 30, 2014 notice to end their tenancy placed in their mailbox by the tenants. The landlord also confirmed that the landlords received copies of both the tenants' original dispute resolution hearing package sent by registered mail on March 12, 2014, and the tenants' amended dispute resolution hearing package sent by the tenants by registered mail on March 18, 2014. The tenants' amended hearing package added a request to cancel the 1 Month Notice. The parties confirmed that they had received and reviewed one another's written evidence packages. I am satisfied that the parties have served one another with all of the above documents in accordance with the *Act*, and were prepared to proceed with this hearing.

On April 24, 2014, the Residential Tenancy Branch (the RTB) received a copy of the tenants' March 30, 2014 letter to the landlords advising them that they were planning to vacate the rental unit by April 30, 2014, the same date identified in the landlords' 1 Month Notice. The landlords entered a copy of this letter into written evidence. At the hearing, the female tenant (the tenant) confirmed that the tenants have already moved out of the rental unit on April 26, 2014. Both parties agreed that they have a joint move-

out condition inspection arranged for April 30, 2014, at which time the tenants are scheduled to surrender vacant possession of the rental unit and their keys. The tenant withdrew the tenants' application to cancel the 1 Month Notice. The tenants' application to cancel the 1 Month Notice is hereby withdrawn.

The tenant said that the actual moving costs were significantly less than the \$2,000.00 estimate they originally received and requested in their application. Although she had not entered into written evidence copies of their actual moving receipts, the tenant asked that the amount of the tenants' requested monetary award be reduced from \$2,000.00 to \$771.00, the amount of their actual moving expenses.

At the hearing, the tenant said that the tenants were no longer seeking the issuance of a summons to to the tenant in the basement suite of the rental unit. She said that the tenants were intending to launch independent legal action against that individual.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for damages or losses arising out of this tenancy? Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

The tenant testified that the tenants paid their \$750.00 security deposit for this tenancy on or about March 14, 2013. The landlord testified that the tenants paid this security deposit on April 7, 2013, the same date that the parties signed their periodic Residential Tenancy Agreement (the Agreement), entered into written evidence by the tenants. The landlords continue to hold the tenants' security deposit.

According to the terms of the Agreement, the tenants were to take occupancy on May 1, 2013, at a monthly rent of \$1,500.00, payable in advance on the first of each month. The tenants were also responsible for paying the utilities for this upper rental unit in a two unit rental property. Although the tenants understood that this was a non-smoking rental property, the tenant confirmed that there was nothing specific in their Agreement to that effect. I also note that the one page addendum to the Agreement made no mention that this unit or the unit below was a non-smoking rental unit. The tenant said that they have nothing formal in writing from the landlords to confirm that this is a non-smoking rental property. The male tenant testified that one of the letters from the basement tenant, confirmed by some documents issued by the landlord, indicated that the basement tenant also understood that there was to be no smoking within the rental unit or near the rental unit.

In the Details of the Dispute in the tenants' application for dispute resolution, the tenants described their original request for the issuance of a monetary award of \$2,000.00 against the landlords in the following terms:

Landlord is allowing smoking and drug use from basement tenants, despite an agreement that this is a non smoking property inside and out. (smoke/marijuana use occurs inside and outside the building). Landlord is not taking actions, despite numerous complaints dating back to June 2013. Our son is asthmatic, so we will need to move as this is a health hazard. We are seeking moving and cleaning costs, plus the filing fee. I will have the exact amount of these costs (I believe it will be around \$1500-\$2000) once we have found a new place to rent, as I am currently 9 months pregnant we are looking at May 1st at the earliest.

In their written evidence, the tenants maintained that the landlords issued the 1 Month Notice shortly after receiving a copy of their dispute resolution hearing package. They claimed that the landlords' 1 Month Notice was in direct retaliation for the tenants' filing of an application for a monetary award against the landlords.

The tenants entered into written evidence a copy of the 1 Month Notice requiring the tenants to end this tenancy by April 30, 2014. In this Notice, the landlords cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

Tenant has engaged in illegal activity that has, or is likely to:...

- *jeopardize a lawful right or interest of another occupant or the landlord...*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants maintained that the basement tenant did not abide by the oral condition that this was to be a non-smoking rental property and that he should not smoke in the rental unit or near the buildings. The tenants submitted written evidence that they were concerned about the possibility of smoking in the other rental unit of this property from their first enquiries with the landlord because their son is asthmatic and cannot tolerate any smoke in the residence where he is living. They noted that they had encountered problems of this nature in their previous residence and were particularly careful about raising their concerns about the rules around smoking before they entered into this tenancy. The tenants maintained that the smell of cigarette and marijuana smoke emanated from the basement rental unit and a shared outside storage shed on the

rental property. They provided copies of photographs showing evidence of cigarette butts around the property and in the shared storage shed.

The landlord confirmed that he asked both sets of tenants when they entered into their rental agreements to not smoke on the property. The landlord also entered written evidence that he would have tried to take action against smoking tenants had he become aware that they were smoking in this rental property. However, he said that he never smelled either cigarette or marijuana smoke in the basement rental unit when he visited the property. He also said that because of municipal bylaws and his failure to include a no smoking clause in either Agreement or addendum, his options would have been limited, even if he had noticed smoking occurring in the basement rental unit.

The landlord also maintained that the relationship between the tenants and the basement tenant deteriorated to the extent that the basement tenant made repeated complaints to him about the tenants' behaviours. The landlord entered into written evidence a copy of a letter in which the basement tenant alleged that the tenants were withholding his mail, and after he complained, took to leaving his mail in the rain. This letter also raised a number of concerns about the tenants, including their alleged practices of causing noise and ensuring that the basement tenants would have no hot water when they needed to shower after work.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damages or losses 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 damages or losses 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, the onus is on the tenants to prove on the balance of probabilities that the landlords were responsible for damages or losses arising out of this tenancy.

The tenants did not submit their actual receipts for their moving expenses, although it would have been difficult to do so as these receipts were only recently issued.

Since the tenants chose to end their tenancy on the date identified in the landlords' 1 Month Notice and withdraw their application to cancel the 1 Month Notice, there is no need for me to consider whether or not the landlords had valid reasons to issue their 1 Month Notice. I should note, though, that a landlord would only need to be correct in

identifying one of the reasons cited in a 1 Month Notice in order to enable the landlord to obtain an Order of Possession based on that Notice.

It is truly unfortunate when disputes between those sharing a rental building become so magnified that a landlord has to issue a notice to end a tenancy to the tenants in one or both of the rental units. In this case, while it is clear that the tenants and the tenant in the basement suite were having considerable difficulties with one another, I heard conflicting sworn testimony and received conflicting written evidence as to who was to blame for these difficulties.

At the hearing, the tenant maintained that the tenants were entitled to a monetary award to cover their moving costs because the landlords had failed to provide them with the smoke free environment that they thought they would be receiving in this tenancy. She said that the landlord refused to answer their text messages and seldom returned phone calls when the tenants asked him to intervene to modify the behaviours of the basement tenants. She testified that the tenants never would have moved into this rental property had they known that the landlords would not enforce their commitment to keep this rental property smoke-free. The tenant also maintained that the basement tenant had potentially breached the terms of his tenancy agreement and the landlords' insurance by failing to demonstrate that the basement tenant had tenants' insurance.

When issues arise between tenants and allegations are made that the landlords should be held responsible for moving costs of the relocation of one or both tenants, the most reliable evidence is often the written Agreement between the parties. In this case, despite the tenants' concerns about smoking due to the health of their son, they did not extend that caution to ensuring they signed an Agreement that confirmed that this was a non-smoking rental property. Whether the basement tenant was smoking in the rental unit or close enough to the building to cause second hand smoke to be present in the upper rental unit, I find that the tenants have not provided sufficient evidence to demonstrate that smoking was expressly prohibited on this rental property.

In this case, I find that all parties, including the basement tenant(s), appear to have played a role in the decision by both the landlords and the tenants that this tenancy could not continue. While the tenants maintained that the landlords failed to properly address this situation, requiring them to move, the landlords issued a 1 Month Notice, claiming that it was the tenants and not the basement tenants who were significantly interfering with or unreasonably disturbing the rights of the basement tenants.

As noted above, the burden of proof in such cases rests with the Applicant for a monetary award. I find that it is just as likely that the tenants were responsible for the

circumstances that led to the end of this tenancy as it is to accept the tenants' assertion that this tenancy ended because of a failure by the landlords' to enforce the tenants' rights as established in their Agreement and by the *Act*. While it is unfortunate when parties cannot resolve such disputes and one set of tenants must leave, this does not result in landlords bearing the responsibility for moving costs, unless it can be clearly demonstrated that the landlords contravened either the Agreement between the parties or the *Act* (or both). Under these circumstances, I find that the applicants have not demonstrated to the extent required that the tenancy ended because of the landlords' failure to abide by the terms of their Agreement or the *Act*. I therefore dismiss the tenants' application for a monetary award for damages and losses arising out of this tenancy without leave to reapply.

As the tenants have been unsuccessful in their application, I also dismiss their application to recover their filing fee from the landlords.

As the parties have not yet completed their joint move-out condition inspection and the tenants have not applied to recover their security deposit, the provisions of section 38 of the *Act* continue to apply to the return of the tenants' security deposit.

Conclusion

The tenants' application to cancel the 1 Month Notice is withdrawn.

I dismiss the remainder of the tenants' application for a monetary award 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: April 28, 2014

Residential Tenancy Branch

