



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with applications by both the tenants and the landlords. The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover their RTB filing fee. The landlords also applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover their RTB filing fee.

Both tenants and all four landlords attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The tenancy agreement indicates the tenancy started on February 1, 2013 and was for a fixed term ending February 1, 2014. The tenants were obligated to pay rent of \$1,800.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$900.00 and a pet deposit of \$900.00.

The parties agree on the following facts:

The landlords emailed the tenants a letter on November 15, 2013 to give notice that the tenancy would end at 1 p.m. on February 1, 2014 because the landlords

intended to occupy the rental unit and because the landlords intended to perform substantial renovations (the "Notice").

On January 1 or 2, 2014, the tenants gave 10 day notice that they would vacate the rental unit on January 14, 2014. A move-out inspection was conducted on January 14, 2014.

The tenants did not pay rent for the month of January 2014.

The landlords returned the tenants' security and pet deposits in full to the tenants.

The tenants claim \$987.10 for pro-rata rent for the 17 day period January 15, 2014 through January 31, 2014, based on Section 50. The tenants also claim their RTB filing fee of \$50.00.

The landlords claim \$1,045.16 for 18 days rent for the period from January 14, 2014 through February 1, 2014 for lost rental income. The landlords also claim their RTB filing fee of \$50.00.

Analysis

Section 49 sets out the process for ending a tenancy for landlords' use of the property. In this case, the landlords followed the process set out in Section 49(2)(c) by giving the tenants notice to end the tenancy effective on a date that must be ... (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

According to Section 49(2), such a notice is subject to Section 51 *[tenant's compensation: section 49 notice]*. Section 51 states, in part:

(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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The effect of Section 51 is that tenants who receive a notice to end tenancy for landlord's use are entitled to one month's rent. It is the tenant's choice whether to not pay rent for the last month of the notice period or to pay rent for the last month of the notice period and then receive a payment for the amount of one month's rent at the end of the notice period.

In this case, the tenants chose to not pay rent for the last month of the notice period, January 2014. The tenants were entitled to occupy the rental unit rent-free for the month of January 2014, regardless of whether they stayed for the entire month. For that reason, I find the landlords did not incur a loss of rental income for the month of January 2014 due to any wrongdoing by the tenants. Instead, it is the operation of Sections 49 and 51 that results in a one-month loss of rental income whenever a landlord converts a rental unit to landlord's use. The landlords' application is therefore dismissed.

Section 50 provides a mechanism whereby a tenant who receives a Section 49 notice to end tenancy may end the tenancy themselves before the end of the notice period. However, Section 50 only applies to a "periodic tenancy" which is a month-to-month tenancy rather than a fixed term. In this case, the tenancy was for a fixed term that had not expired before the end of the notice period. For that reason, Section 50 does not apply and the tenant's application is dismissed.

Conclusion

The tenants' application is dismissed. The landlords' application is dismissed.

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 15, 2014

Residential Tenancy Branch

