



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, MNSD and OPC

Introduction

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* for orders as follows:

1. an Order of Possession for cause pursuant to section 55;
2. a Monetary Order for unpaid rent and utilities pursuant to section 67;
3. a Monetary Order for compensation as a result of expenses incurred pursuant to section 67;
4. an Order to be allowed to keep all or part of the security deposit pursuant to section 38; and
5. to recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The tenants did not appear. The landlords were given full opportunity to be heard, to present evidence and to make submissions. The landlords provided evidence that a 1 Month Notice to End Tenancy ("1 Month Notice") was personally served to the tenants on October 14, 2016. The landlords explained that the 1 Month Notice was issued so that one of the landlords could permit their cousin and cousin's friend to move into the rental unit. The landlords gave sworn testimony that they personally served the tenants with the Application for Dispute Resolution hearing package on November 21, 2016. I accept that the tenants were duly served with the 1 Month Notice and the Application for Dispute Resolution hearing package pursuant to section 89 of the *Act*.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issues

Are the landlords entitled to a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*?

Are the landlords entitled to a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*?

Can the landlords retain the damage deposit to apply it against any Monetary Order issued pursuant to section 38 of the *Act*?

Are the landlords entitled to recover the cost of the filing fee from the tenants?

Background and Evidence

This tenancy began on July 20, 2015. Rent was set at \$700.00 per month and a security deposit of \$350.00 was collected at the outset of the tenancy. Further to this, the landlords provided undisputed testimony that they agreed with the tenants to split the cost of utilities. The tenants share was to be 40% of the overall bill. The landlords are seeking an order of possession for cause and a monetary order of \$1,760.00. The landlords testified during the hearing that on August 16, 2016 they provided verbal notice to the tenants that they were to vacate the property by October 1, 2016. No evidence of such an arrangement was presented at the hearing. The landlords continued to explain that the reason “notice” was given to the tenants was so that a cousin and a friend of the cousin could move into the rental unit.

The landlords based their claim for a Monetary Order on fees that they incurred as a result of the current tenants not vacating the rental unit, along with unpaid rent for November 2016 and unpaid utilities. The landlords stated that they had arranged for persons to occupy their rental starting on November 15, 2016, however, due to the presents tenants not having vacated the unit, the landlords were forced to pay for the rental of a vehicle and storage of goods from their prospective tenants. In addition, the landlords are presently paying the rent of these prospective tenants in a different rental property.

The landlords requested a monetary award of \$1,760.00 from the tenants for losses they state have occurred as a result of this tenancy. The landlords have also applied for reimbursement of the cost associated with the filing fee and to keep all or part of the security deposit to apply against their monetary claim. Specifically, the landlords are seeking the following:

Item	Amount
Unpaid Rent November 2016	\$ 700.00
Unpaid Utilities	300.00
Vehicle Rental	160.00
Storage	200.00
Rent for other tenants	400.00
Filing Fee	100.00
Minus Security Deposit	(-350.00)
Total =	\$1,510.00

Analysis – 1 Month Notice

The female landlord testified that she issued a 1 Month Notice so that her cousin and a roommate may move into the rental unit. This is not a reason provided for cause by a 1 Month Notice pursuant to section 47 of the *Act*. Should the landlords wish for a close family member to occupy the rental unit, the landlord must issue a 2 Month Notice to End Tenancy (“2 Month Notice”) as per section 49 of the *Act*. Further to this, a cousin is not included in the statutory definition of a “close family member” as described in section 49 of the *Act*. This further invalidates the landlord’s application. Based on the above reasons, I am dismissing the landlord’s applications and the tenancy shall continue.

Analysis - Monetary Order

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, the onus is on the landlords to prove their entitlement to their claim for a monetary award.

As the landlords have issued their 1 Month Notice in error, their claims to be reimbursed for the vehicle rental, storage and rent for their prospective tenants are costs that the landlords themselves must bear.

No evidence of unpaid November 2016 rent or of unpaid utility bills was provided at the hearing. The landlords sought to rely solely on their testimony. Due to the fact that the landlords have incorrectly issued a 1 Month Notice and sought compensation for items for which they cannot claim, I am declining to award a monetary award for November 2016 rent or unpaid utilities when no bills, invoices or receipts have been presented to me. I therefore dismiss the landlords' monetary claim.

Conclusion

I dismiss the landlords' 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 13, 2016

Residential Tenancy Branch