



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TAM MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC CNC RR FF

Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47;
- an Order for the landlord to comply with section 62 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Only the tenants and their advocate, P.L. appeared at the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenants provided undisputed testimony that they served the landlord with the tenants' Application for Dispute by way of Canada Post Xpresspost on March 1, 2018. A copy of the Canada Post Xpresspost receipt, tracking number and tracking information were provided to the hearing. While not a recognized form of service under the *Act*, I find that the tenants took adequate steps to serve the landlord with their Application for Dispute Resolution. Pursuant to sections 71(1) & 90 of the *Act*, the landlord is deemed to have been served with the tenants' application for dispute on March 6, 2018, five days after its posting.

Following opening remarks, the tenants, stated that they were no longer pursuing their notice to cancel the landlord's 1 Month Notice to End Tenancy and wished to only focus on their application for a monetary award.

Issue(s) to be Decided

Can the tenants' recover a monetary award?

Background and Evidence

Undisputed testimony provided to the hearing by the tenants and their advocate explained that this tenancy began on August 1, 2016 and ended on February 28, 2018. Rent was \$800.00 at the outset of the tenancy, and rose to \$829.00 over time. A security deposit of \$400.00 was returned to the tenants following the conclusion of their tenancy.

The tenants are seeking a monetary award of \$1,600.00. They said that this amount reflected \$800.00 for loss of a facility, specifically the bathroom, for the final month of their tenancy, and \$800.00 due under section 49 of the *Act* because the landlord had not used the premises as noted on a notice to end tenancy.

The tenants and their advocate detailed the manner in which the landlord had failed to provide them with a bathroom for the final month of their tenancy. They said that because of an issue with their bathroom, they were instructed to use the bathroom in unit 105. The tenants said that this bathroom was shared by "four or five" other units and was located two floors below their unit "at the end of the building." The tenants noted that this part-time facility was taken away from them on February 18, 2018 following a dispute with the building manager. The tenants said that they did not have access to another bathroom in the building, and that their unit only contained one bathroom. The tenants are seeking a return of rent for February 2018.

In addition to their application related to loss of a bathroom, the tenants are seeking \$800.00 because of the purported false pretenses under which they were given a notice to end tenancy. The tenants argued that they were given a 1 Month Notice to End Tenancy on February 19, 2018 because the landlord alleged that they had an unreasonable number of occupants in their rental unit. The tenants disputed this notice and this matter was to be considered at the hearing today. Following receipt of this notice, the tenants received four separate letters informing them that they were to "move immediately" and that continued occupation of their rental unit represented a health hazard. The tenants' advocate alleged that the true purpose and motivation behind the landlord's issuance of a 1 Month Notice was related to repairs that the landlord sought in the rental unit. The tenants' advocate argued that the landlord should have served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of

Property and have provided the tenants with the appropriate compensation due under section 49 of the *Act*.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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 tenants to prove their entitlement to a claim for a monetary award.

The tenants explained that the landlord contravened section 27 of the *Act* which states, "A landlord must not terminate or restrict service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement."

The tenants and their advocate testified at the hearing that the landlord restricted their ability to access the bathroom because of repairs for a leak which were being performed. They said that the landlord offered them use of a bathroom 2 floors down, on the "other side of the building" while this work was being done, and that he offered them no compensation for this inconvenience.

As part of their evidentiary package, the tenants supplied a letter from the landlord dated February 15, 2018. This letter states the following, "we spoke to the insurance adjuster regarding her assessment of the water damage in your unit. She advised that it will be necessary for your unit to be vacated during the repairs process. This is due to the fact that the bathroom will not be in service for the majority of that time...we are sorry to inform you that the insurance adjuster confirmed that we do not have coverage to assist you with your displacement cost. While you have vacated unit 301 and repairs are under way we will not be charging you rent on unit 301." The letter then goes on to list alternatives which may be available for the tenants' consideration. These included, renting unit 105 and renting a furnished unit on a short term basis.

A second letter dated February 18, 2018 from the landlord to the tenants states, "The use of 105's bathroom has been provided as a courtesy to you following the unforeseen

water leak in your unit that made your bathtub unusable. To be clear, the use of 105's bathroom is not something we are required to provide to you...effective immediately the bathroom of 105 is no longer available for your use. Please find alternative accommodation immediately."

I find the landlord's position regarding the use of a bathroom to be a violation of section 27 of the *Act*. The landlord had a duty to provide a bathroom to the tenants. The tenants testified that they only had one bathroom in their unit. Evidence presented by the tenants showed that the bathroom they were offered was taken away from them halfway through the month, leaving them with no alternative. I find that a bathroom is a service or facility that is *essential* to the tenant's use of the rental unit as living accommodation. Even though their insurance did not provide for it, the landlord had a duty to cover the costs of either re-housing the tenants or providing them with a workable solution. For these reasons, I allow the tenants to recover the \$800.00 sought for loss of a bathroom.

The second portion of the tenants' application concerns \$800.00 for lack of compensation related to a notice to end tenancy. The tenants and their advocate argued that the landlord's true motivation for serving a 1 Month Notice to End Tenancy was to have them vacate the rental unit so that repairs could be made. The tenants argued that a 2 Month Notice to End Tenancy should have been issued and that they essentially moved out of the rental unit because of landlord's use, yet received no compensation.

Section 51 of the *Act* states, "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."

I find that no notice to end tenancy under section 49 was ever issued to the tenants and that they are therefore not entitled to compensation under section 51 of the *Act*. Testimony provided by the tenants and their advocate explained that the tenants vacated the rental unit under their own volition because they did not wish to engage in a dispute with the landlord and wanted to avoid conflict. The tenants were under no obligation to vacate the rental unit when they did, and the purpose of today's hearing was in fact to rule on whether or not the landlord's 1 Month Notice was valid. The tenants moved out prior to the hearing and therefore have no recourse to funds under this section of the *Act*.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$900.00. This amount includes a return of their filing fee.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: March 29, 2018

Residential Tenancy Branch