



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

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 the filing fee for this application pursuant to section 72.

The landlord, the landlord's agent, Tenant C.T. (the tenant) and the tenants' advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant indicated that they were representing the interests of both tenants in this matter.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord is duly served with the Application and the tenant's evidence.

The tenant acknowledged receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided written evidence that this tenancy began on September 01, 2013, with a monthly rent of \$2,800.00, due on the first day of each month.

The tenant also provide in evidence:

- A copy of a Mutual Agreement to End a Tenancy (Mutual Agreement) dated February 15, 2018, signed by the landlord and the tenant on an approved form from the Residential Tenancy Branch, with an effective date of February 15, 2018. On the Mutual Agreement it is indicated that there is an addendum of 1 page attached;
- A copy of a document dated February 15, 2018, which states that the landlord will pay the tenant for 1 month's rent (for use of Landlords use of Property) for compensation. A cheque to be issued and post dated March 10, 2018, in the amount of \$2,800.00. The document is signed by landlord, the tenant and witnessed by the landlord's agent; and
- A copy of a cheque in the amount of \$2,800.00 from the landlord to the tenant dated March 10, 2018.

The landlord provided in evidence:

- A copy of a written statement submitting that the rental unit was advertised for sale with a lease being in place until August 2018. The statement indicates that the tenant sent a text message on January 14, 2018, advising the landlord that they were ending their relationship with their partner, that the tenant needed to move out and inquiring as to whether the landlord could have the rental unit rented out to new occupants for February 01, 2018. The statement goes on to say that on February 15, 2018, the landlord met the tenant at the rental unit, which was cleared of all of the tenant's belongings, and that the tenant would only give the landlord the keys back to the rental unit on condition of the landlord signing an addendum to the Mutual Agreement regarding the payment of \$2,800.00 to the tenant for compensation. The statement submits that the landlord signed the agreement under duress. The statement indicates that the landlord did not ask the tenant to move out and only brought a mutual agreement to end tenancy form as per the tenant's request to end the tenancy;
- A copy of an advertisement of the rental unit for sale indicating that there is a lease in place until August 2018;

- A copy of a text message from the tenant to the landlord requesting for the landlord to find new occupants for the rental unit for February 01;
- A copy of a text message from the landlord to the tenant stating that they will have to inquire with the listing agent about whether the rental unit can be occupied with new occupants and inquiring as to whether the tenant can find a new co-tenant to continue the tenancy; and
- A copy of an e-mail from the landlord to the tenant advising that they have stopped payment on the cheque after consulting with the Residential Tenancy Branch who advised that he did not owe any compensation to the tenant.

The tenant stated that the landlord sold the rental unit with the new owners set to take vacant possession of the rental unit on March 08, 2018. The tenant submitted that a mutual agreement to end the tenancy was signed between the landlord and the tenant. The tenant referred to an addendum that was also signed between the landlord and the tenant for one month compensation in the amount of \$2,800.00.

The tenant stated that text messages sent to the landlord, regarding the tenant's co-tenant moving out of the rental unit and the tenant inquiring to the landlord about the possibility of the landlord finding new occupants for the rental unit as of February 01, 2018, were simply the tenant weighing their options. The tenant maintained that no official notice to end tenancy was given from the tenant to the landlord.

The landlord submitted that it was never his intention to give a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) to the tenant. The landlord referred to evidence provided of the advertisement of the rental unit for sale which clearly indicated that there was a lease in place until August 2018. The landlord testified that they never asked the tenant to move out of the rental unit.

The landlord stated that the tenant had sent text messages to him regarding the end of his relationship with the co-tenant, who had moved out of the rental unit before February 01, 2018. The landlord indicated that they had viewed the co-tenant moving out of the rental unit as the end of the tenancy agreement with both tenants. The landlord submitted that, based on the tenant indicating that they were seeking to end the tenancy in conjunction with the co-tenant moving out, the landlord sold the rental unit as being vacant at the time that the new owner was to take possession of the rental unit.

The landlord submitted that when they attended the rental unit on February 15, 2018, the rental unit was cleared of all the tenant's belongings but the tenant would not give the landlord the keys to the rental unit unless the landlord gave compensation to them.

The landlord testified that the tenant wanted a Two Month Notice served to them, based on the landlord selling the rental unit, due to the compensation associated with the Two Month Notice. The landlord maintained that they had only brought a Mutual Agreement form to the rental unit as it was their position that the end of the tenancy was being mutually agreed upon and only signed the addendum out of duress.

The landlord stated that they were unsure whether they were obligated to compensate the tenant and that they signed the addendum to the Mutual Agreement with a post-dated cheque given to the tenant so that they could consult with a professional advisor before the funds in the cheque were available. The landlord stated that when they confirmed that they were not obligated to provide compensation to the tenant, they stopped payment of the cheque before it could be cashed by the tenant.

The tenant did not dispute that they had all of their belongings removed from the rental unit but stated that they were prepared to continue the tenancy if the appropriate compensation was not provided to the tenant based on the landlord selling the rental unit. The tenant confirmed that they are requesting a monetary award in the amount of \$2,800.00, equivalent to one month's rent pursuant to sections 49 and 51(1) of the *Act*, and to recover the \$100.00 filing fee.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice upon the sale of the property and when the purchaser indicates in writing that the purchaser intends on occupying the rental unit. Section 49 (7) establishes that a notice to end tenancy served under section 49 must comply with section 52. Section 52 states that when a notice to end tenancy is given by a landlord, it must be on the approved form.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* 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 have reviewed all documentary evidence, including the affirmed testimony, and I find that the tenant has not demonstrated that they have suffered a loss due to the actions or neglect of the landlord in violation of the *Act*, Regulations or tenancy agreement. I find that the addendum provided in evidence is not a notice to end tenancy under section 49 of the *Act* as it is not on the approved form and does not comply with section 52 of the *Act*. As I have found that the addendum is not an approved form under sections 49 and 52 of the *Act*, I find that the tenant is not entitled to any compensation under section 51 of the *Act*.

I find that this tenancy ended based on the Mutual Agreement provided in evidence that complies with section 52 of the *Act*. For the same reason that I have not granted compensation to the tenant under sections 49 and 51 of the *Act*, due to the addendum not being an approved form under section 52 of the *Act*, I would not have granted an Order of Possession to the landlord based on the addendum that was signed between the parties. I would have only granted an Order of Possession based on the Mutual Agreement form as it is the only form completed by the parties in accordance with the *Act*.

I find that the tenant did not dispute that their belongings were removed from the rental unit. Although the tenant stated that they were willing to continue the tenancy if they did not receive the compensation they felt they were entitled to, I find that, based on a balance of probabilities the tenant was not intending on residing in the rental unit past February 15, 2018 and that it is likely that they had entered into a new tenancy agreement for a different unit as of that date.

I accept the landlord's evidence and testimony that they did not ask the tenants to move out of the rental unit as they had advertised the rental unit as having a lease attached to it until August 2018. I find that, based on a balance of probabilities, the evidence and testimony support that the tenant wanted to end the tenancy by mutual agreement and when they found out the landlord had sold the rental unit with a vacant possession date in March 2018, they felt they were entitled to compensation based on section 51 of the *Act*. I find that that the tenant used this vacant possession date as leverage to have the landlord sign an addendum indicating compensation of one month's rent and provide a

cheque in that amount before giving the keys back to the landlord; however, I find the issue of duress is moot as the addendum is not an approved form under the Act and there is no compensation under the *Act* associated it.

For the above reasons, I find that the landlord is not obligated to compensate the tenant under sections 49 and 51 of the *Act*. Therefore, the tenant's Application for a monetary award in the amount of \$2,800.00, the equivalent of one month's rent payable under the tenancy agreement is dismissed, without leave to reapply.

As the tenant is not successful in this Application, I dismiss their request to recover the filing fee without leave to reapply.

Conclusion

The tenants' Application is dismissed in it's 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: October 01, 2018

Residential Tenancy Branch