



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT LRE MNDCT OLC

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*;
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62; and
- an Order suspending or setting conditions on the landlords' right to enter the rental unit.

All named 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 receipt of the landlords' 1 Month Notice to End Tenancy after it was given to them on August 20, 2018. The tenants are found to have been duly served with the notice to end tenancy pursuant to section 89 of the *Act*.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. While the landlord questioned whether the package had been received in time to be considered, I find the landlords were sufficiently served pursuant to section 71(2)(b) of the *Act* with the tenants evidentiary package after it was given to them fourteen days before the hearing.

Preliminary Issue – Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of some issues currently under dispute at this time:

1. Both parties entered into a mutual agreement that this tenancy will end on December 31, 2018 at 1:00 P.M., by which date the tenants and any other occupants will have vacated the rental unit.
2. Both parties agreed that the landlords will continue to hold the security deposit in trust until the tenancy is complete. Following the conclusion of the tenancy, the security deposit is to be dealt with by the parties in accordance with the *Act*.
3. Both parties acknowledged that this settlement agreement constituted a final and binding resolution of all portion of the tenants' applications before me today, save their application for a monetary award.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Background and Evidence

Testimony provided by the tenants explained this tenancy began on January 1, 2017. Rent was \$1,280.00 per month at the outset of the tenancy, and rose to \$1,331.00. A security deposit of \$640.00 continues to be held by the landlords.

The tenants said they were seeking a monetary award of \$15,000.00. Specifically, the tenants sought compensation as follows:

- Boat storage - \$567.00
- Return of Rent Paid & Pain/Suffering - \$13,693.00
- Return of Damage Deposit - \$640.00
- Return of Filing Fee - \$100.00

Total = \$15,000.00

The tenants said they were subject to constant and repeated harassment throughout the course of the tenancy and as a result, suffered a significant loss of quiet enjoyment. In addition, the tenants argued the landlords had reneged on their promise to allow the tenants to store a boat in the driveway of the property after it was purchased in April 2018.

The tenants explained they were informed by the landlords in May 2018 that the storage of a boat was not permitted on the property after originally being informed they would be allowed to store a boat in the driveway. The tenants said they had to find off-site storage and therefore seek a return of the storage cost of \$94.50/month for this purported breach of a verbal agreement.

The majority of the tenants' application concerns compensation of \$13,693.00 representing a return of all rent paid during the tenancy and compensation for what the tenants described as a "stressful and awkward living situation" where they were subject to "constant harassment." The tenants said the police were called to the premises on one occasion because of a disagreement with the tenants and explained their hydro was cut off on two occasions because of the landlords' failure to pay the hydro bill as per the terms of their tenancy agreement. In addition the tenants described how an argument over a refusal to sign a new lease led to a further breakdown of their relationship with the landlords. A copy of this new unsigned lease and a copy of the original submissions were all included in the tenants' evidentiary package.

The landlords disputed that the tenants were entitled to any monetary award. The landlords said no verbal agreement for storage of a boat on the property was ever reached between the parties. The landlords said they were "shocked" to discover a boat on their property as no prior notice informing of the presence of a boat had been provided to them. The landlords conceded their relationship with the tenants had deteriorated but they stated they had never intentionally harassed the tenants. The

landlords acknowledged the tenants' hydro was shut down but said this was only for a two hour period. The landlords maintained the tenants application was not supported by evidence and disputed they had behaved in the manner described by the tenants.

The landlords supplied several warnings letters which were written to the tenants regarding their behaviour as it related to the issuance of the one month notice to end tenancy for cause. The landlords said these letters demonstrated that the parties had a difficult relationship.

Analysis

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 tenants to prove entitlement to a claim for a monetary award.

The tenants argued they were entitled to a monetary award of \$15,000.00 representing a return of rents paid, along with compensation for pain and harassment which they allegedly suffered at the hands of the landlords. The tenants were also seeking a return of their security deposit. I find this application for a return of their security deposit to be premature as the tenancy has not yet ended. I will therefore only consider the portion of the application related to boat storage, harassment and return of rent.

The tenants detailed their concerns with the rental property and highlighted the manner in which they felt the landlords had failed to treat them in a respectful manner and had harassed them.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment

After having considered the testimony of all parties in attendance at the hearing, and having reviewed the evidence submitted, I find the tenants have failed to show the landlord violated the tenancy agreement or contravened the *Act* in a manner that would justify returning all rent paid during the tenancy. The landlords acknowledged the difficult relationship they had with the tenants but I find little evidence was presented by the tenants demonstrating, “frequent and ongoing interference or unreasonable disturbances.” Furthermore, very little evidence was presented in the tenants’ application to support their position they were the victims of harassment as described at the hearing. I find both parties were partially responsible for the difficult relationship that was fostered throughout the tenancy. The tenants provided some documentary evidence in the form of text messages noting an issue around hydro due to non-payment. The landlord acknowledged hydro had been cut off at one point during the tenancy, though they maintained it was “only for two hours.”

Residential Tenancy Policy Guideline #16 examines the issue of damages. It notes, “nominal damages may be awarded where there has been no significant loss or significant loss has been proven, but it has been proven there has been an infraction of a legal right.” I find the landlords had a duty to ensure that hydro was provided to the tenants as per the terms of the tenancy agreement. The tenants were denied this right due to non-payment of the hydro bill by the landlords and therefore suffered a loss. I will award the tenants a nominal award of \$100.00 representing loss associated with hydro.

The tenants argued they were entitled to a return of funds associated with storage for a boat. The tenants said an oral agreement was entered into by the parties, whereby the landlords agreed to allow them to store their boat in the driveway. The landlords disputed such an agreement existed and described the boat as an “eyesore” which was parked in the driveway without any notice. While the landlords alleged the tenancy agreement provided for parking of vehicles only, I found no evidence of this in the agreements provided; however, a copy of a letter informing the tenants of this violation of the tenancy agreement was provided in the landlords’ evidentiary package.

The tenants failed to provide any receipts, invoices or other evidence in support of the expenses they have incurred as a result of their boat being in storage. Furthermore, I

find the landlords letter dated May 4, 2018 warning the tenants their boat was not welcome on the premises sufficiently rebuts the tenants' argument that an oral agreement was in place between the parties permitting the tenants to store their boat on the property. I dismiss this portion of the tenants' application for a monetary award.

I dismiss the tenants' application for a monetary award except for the \$100.00 I have awarded them for nominal damages related to loss of hydro. As the tenants were partially successful in their application they may recover the \$100.00 filing fee from the landlords.

Conclusion

This tenancy shall end by way of Mutual Agreement to End Tenancy at 1:00 P.M. on December 31, 2018. Should the tenants fail to vacate the property by this time the landlord will be entitled to apply for an Order of Possession.

The tenants' are awarded a monetary award of \$200.00 representing a return of the filing fee and nominal damages of \$100.00.

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 18, 2018

Residential Tenancy Branch