



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR CNR MNDCT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both 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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenants were personally served with the 10 Day Notice on September 4, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on September 4, 2018.

Both parties confirmed in the hearing that the tenants moved out on September 30, 2018. As this tenancy has come to an end, both applications pertaining to the 10 Day Notice are cancelled as the landlord no longer requires an Order of Possession.

Issue(s) to be Decided

Are both parties entitled to the monetary orders that they applied for?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on August 1, 2018, and was to end on July 31, 2019. Monthly rent was set at \$3,650.00, payable on the first of the month. The landlord collected a security deposit of \$1,825.00, which the landlord still holds. The amount indicated in the tenancy agreement was \$1,900.00, but both parties confirmed that the correct amount is \$1,825.00. The tenants moved out on September 30, 2018, before the end of the fixed term tenancy as they felt the home was unsafe.

The landlord is seeking a Monetary Order for \$3,650.00 for the September 2018, which both parties confirmed was not paid by the tenants.

The tenants did not dispute that they withheld the September 2018 rent and moved out before the end of the fixed-term tenancy. The tenants testified that they requested an early end to the tenancy because they felt that the landlord failed to disclose to them all the issues with the home. The tenants testified that the landlord was performing renovations on the home, which posed a health hazard to their entire family. The tenants testified that they had relocated from another province, and the landlord made no mention of the ongoing renovations, which involved staining wood outside the home. The tenants felt that the fumes and dust were toxic, and could not open their windows. The tenants submitted that the renovations were done without proper permits, and in contravention of city bylaws. The tenants also felt that they had little privacy as the landlord was often in the yard.

The tenants are seeking a monetary order in the amount of \$5,475.00 for the reimbursement of the rent paid to the landlord, and \$5,000.00 in compensation for moving costs. The tenants were unable to give a specific breakdown for the how the \$5,000.00 was determined.

The landlord admitted that he was performing renovations on the home, but that it was necessary in order to fulfill his obligations as a landlord to maintain and repair the home under the *Act*. Furthermore, the landlord testified that instead of addressing the issues with him, the tenants had decided to contravene the *Act* by ending the fixed-term tenancy early.

The tenants testified that the landlord had trouble re-renting the home, and that supports their claim that the home was in poor condition. The landlord testified that he had difficulty re-renting the home due to the time of year and small target market for this kind of rental property.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants did not dispute the fact that they had withheld the rent for September 2018. I find that the tenants were obligated to pay the rent as per the tenancy agreement and the *Act*. I find the landlord provided undisputed evidence to support that the tenants have not paid the outstanding rent, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent, nor do I find that the tenant had a right under the Act to deduct or withhold all or portion of the rent. I find that the landlord suffered a monetary loss of rent for the month of September 2018, and accordingly I find that the landlord is entitled to a monetary order in the amount of \$3,650.00 for the September 2018 rent.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the tenants did request an early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy before September 7, 2018 after the tenants received a 10 Day Notice for Unpaid Rent. The tenants moved out 10 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

The tenants made a monetary claim in the amount of \$10,475.00 in compensation for the landlord's actions during this tenancy.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” 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 or 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, on a balance of probabilities, that the landlord caused them a loss, and the amount of such loss.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties, and while it was undisputed that the home was undergoing renovations during this tenancy, I find that the tenants did not

provide sufficient evidence to establish that the landlord had failed to comply with the *Act*. Although I sympathize with the tenants that the renovations posed an inconvenience and nuisance to them, the tenants did not provide expert evidence or reports to support that the renovations were hazardous to their health. Furthermore, the tenants did not provide sufficient evidence to support how the landlord's actions were in contravention of the *Act*. I accept the landlord's testimony that the renovations were undertaken because of the landlord's obligations under section 32 of the *Act*, rather than in contravention of it.

As stated above, the tenants bear the burden of establishing their claim. I find that the tenants failed to establish that they suffered a monetary loss in the amounts claimed due to the landlord's deliberate actions and failure to comply with the *Act*. Furthermore I find that the tenants failed to provide a specific break down of the monetary compensation claimed, and how the specific amounts were determined. On this basis, the tenants' entire monetary claim is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,825.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$1,825.00 in partial satisfaction of the monetary claim.

Conclusion

I dismiss the tenants' entire application without leave to reapply.

As the tenants have moved out, the applications pertaining to the 10 Day notice were cancelled.

I issue a \$1,925.00 Monetary Order in favour of the landlord's favour under the following terms.

Item	Amount
Unpaid Rent for July 2018	\$3,650.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,825.00
Total Monetary Order	\$1,925.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: October 26, 2018

Residential Tenancy Branch