



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL; CNL, MNDCT, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession in relation to the 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's assistant (collectively the "landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Withdrawal

During the hearing the tenants advised that they wished to withdrawn their application to cancel the 2 Month Notice. The tenants testified that they are vacating the unit on September 30, 2018, the effective date of the 2 Month Notice.

Under the RTB Rules of Procedure section 5.0.1 a tenant may not withdraw an application to cancel a Notice to End Tenancy unless the tenant has the landlord's written consent to withdraw the application.

Based on the above, I do not permit the tenants to withdraw their application to cancel the 2 Month Notice.

Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party authorized to recover the filing fee?

Background and Evidence

As per the testimony of the parties, this tenancy, based on an oral agreement began on April 1, 2018. Rent in the amount of \$1,500.00 is payable on the first of each month. The tenants did not remit a security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord testified that she personally served the tenants with the landlord's 2 Month Notice, dated July 27, 2018 on the same date. The effective move-out date on the 2 Month Notice is September 30, 2018. The tenants testified that they received the 2 Month Notice on July 27, 2018.

The grounds to end the tenancy cited in that 2 Month Notice were;

- the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The tenants seek compensation in the amount of \$1,600.00 to cover moving expenses. The tenants testified that this is an estimated figure as they have not yet incurred the total cost of moving. The tenants also seek to recover the \$100.00 filing fee for a total monetary award of \$1,700.00.

In reply, the landlord testified that she should not be held liable for moving expenses as the compensation equivalent to one month's rent for the 2 Month Notice, is intended to cover such costs. The landlords seek recover the \$100.00 filing fee from the tenants.

Analysis

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Although the tenants filed an application to cancel the 2 Month Notice, they did not question the good faith of the landlord. Accordingly, I dismiss the tenants' application to cancel the 2 Month Notice and uphold the landlord's 2 Month Notice.

Under 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. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

As evidenced by the tenants' own testimony, the tenants plan to voluntarily vacate the rental unit on the effective date of the 2 Month Notice. Therefore, if the tenants incur moving costs, which they likely would in any event when moving to a new place, they must bear these costs. The tenants also failed to provide a receipt. I dismiss the tenants' application for moving costs in the amount of \$1,600.00, without leave to reapply.

As the landlords were successful in this application, I find that the landlord is entitled to recover the filing fee. As the tenants were not successful in this application, I find they are not entitled to recover the filing fee.

Conclusion

The tenants' application to cancel the 2 Month Notice is dismissed without leave to reapply.

I grant an order of possession to the landlord **effective at 1:00 p.m. on September 30, 2018.**

I grant a monetary order in the landlord's favour in the amount of \$100.00 against the tenants.

I dismiss the remainder of the tenants' claim, 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: September 18, 2018

Residential Tenancy Branch