



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL FF MNDCL

Introduction:

Both parties attended the hearing and gave sworn testimony. One of the tenants (M.P.) did not attend but the other two said any results would be split evenly among them and they were comfortable with representing the third tenant's interests. The Two Month Notice to End Tenancy for landlord's use of the property is dated August 8, 2018 to be effective October 31, 2018 and the landlord confirmed it was served personally on August 11, 2018. The tenants confirmed the Application for Dispute Resolution dated September 24, 2018 and Amendments were also served personally on them. I find the documents were legally served for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;
- b) For a monetary order for losses incurred due to actions of the tenants;
- c) To recover the filing fee for this application; and
- d) To retain the security deposit to offset the amounts owing.

Issue(s) to be Decided:

The tenants vacated on October 31, 2018 pursuant to section 49 so the landlord no longer requires an Order of Possession. The remaining issues are whether the landlord is entitled to compensation for losses and in what amount and is she entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2017, rent was \$2400 a month and a security deposit of \$1250 and a pet damage deposit of \$1250 were paid. The landlord explained that the rent was originally to be \$2500 and the deposits were based on this but it was changed to \$2400

plus payment of own internet. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

1. All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants explained they were shocked when they got this Notice as they thought they had a fixed term tenancy. However on September 17, 2018, an arbitrator decided it was a month to month tenancy. When they got the decision on September 19, 2018, they explored their options and thought they could over hold and only be responsible for the additional rent. They wrote a letter to the landlord on September 22, 2018 stating their shock at the decision and stating they were exploring their legal options such as Judicial Review and they did not expect to vacate on October 31, 2018 as they had no where to go. However, they realized they could be responsible for other losses of the landlord so they emailed the landlord on October 30, 2018 and arranged to vacate on October 31, 2018 pursuant to the Notice to End Tenancy. One tenant said he is sleeping on the couch of a friend.

The landlord said she incurred significant losses due to information that they were not vacating. She had sold the unit with a possession date of November 1, 2018 and had bought another property closing at that time. She claims as follows:

1. \$800 from the tenant C.L. as he cancelled the payment of the last month's rent
2. \$596 legal costs as she had to retain a lawyer to deal with a possible default on the mortgage on her new purchase
3. \$75 for telephone bill to call the RTB from out of the country regarding the hearing date
4. \$305 for cleaning costs (\$65 for carpet cleaning equipment and \$240 for 6 hours of cleaning).
5. The landlord had submitted a claim totalling \$15,933.11 and withdrew most items in the hearing as they were predicated on her costs for court and bailiffs etc. if the tenants did not vacate on October 31, 2018. However, they did vacate.

The landlord said they did not vacate until 4 p.m. on October 31, 2018 but the tenants denied this and said they left by 1:00 p.m. One said he left at 6:35 a.m. One tenant returned on November 1, 2018 to review the condition of the unit with the landlord. He assisted her to turn on the self clean oven for her. The tenants said they did not get a move-in or move-out condition inspection report from the landlord and they left the unit clean. However, they did have a pet and did not professionally clean the carpet. In the

interests of settling the damages and avoiding the stress of another hearing, they offered to reimburse the landlord \$65 for the carpet cleaning equipment rental and \$120 for her time (6 hrs at \$20 an hour which one tenant said is the usual rate for cleaners). The landlord agreed to accept \$185 total for cleaning costs. She had no invoices to support her claim for cleaning or other costs but offered to send in an invoice later and the tenants said they had a video to rebut the claim.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find an Order of Possession is no longer required but compensation is requested. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

I find the onus is on the landlord to prove on a balance of probabilities their damages or costs and that the tenant is responsible to compensate them. I find the tenant offered to compensate the landlord \$185 for cleaning costs and the landlord accepted their offer. As there was no move-in or move-out condition inspection report provided, I find this is a reasonable settlement as it allows the landlord \$20 an hour for her alleged 6 hours of cleaning. I find the landlord entitled to recover \$185 from the tenants.

In respect to her claim for \$800 from the tenant C.L. as he cancelled the payment of the last month's rent, I find sections 49 and 51 of the *Act* requires the landlord to pay the tenants on or before the effective date of the Notice an amount equivalent to one

month's rent. Section 51 (1.1) further states if the landlord does not pay the one month compensation, the tenant is entitled to withhold it from the last month's rent. I find the tenant C.L legally withheld his last month's rent so the landlord is not entitled to compensation for it. Furthermore, as the other two tenants paid their last month's rent, I find they are each entitled to a refund of \$800.

The \$596 legal costs were claimed as the landlord had to deal with a possible default on the mortgage on her new purchase because the tenants had said they were not leaving. I find they said they were pursuing possible other options such as judicial review of a previous Decision in September and were not planning to leave on October 31, 2018. That September Decision found they did not have a fixed term lease as they thought. I find insufficient evidence that the tenant violated the Act or the tenancy agreement by asserting their legal right to pursue other options. I find they did vacate on October 31, 2018 pursuant to the section 49 Notice. I find if the landlord consulted a lawyer to deal with a possible default on a mortgage, this was not due to a violation of the Act or tenancy agreement by the tenants. Therefore I find her not entitled to recover the lawyer's costs.

In respect to the claim for compensation for \$75 for the telephone bill to call the RTB from out of the country regarding the hearing date, I find this was not due to violation of the Act or tenancy agreement by the tenants. Therefore, I find her not entitled to compensation for this expense. I note also the RTB has toll free numbers and internet services which would have lessened this expense to the landlord.

I dismiss the balance of the claim of the landlord, much of which was withdrawn in the hearing as she did not actually incur the expenses. The expenses claimed largely reflected costs she might have incurred if the tenants had not vacated on October 31, 2018 pursuant to the section 49 Notice.

I find two tenants entitled to refunds of rent pursuant to section 51 of the Act and all three tenants to the balance of the security deposit pursuant to section 38 of the Act. As the landlord filed her application in time to avoid the doubling provision, I find them entitled to the refund of \$2400 of the security deposit. The tenants in the hearing assured us they would split any monetary award appropriately.

Conclusion:

I find the parties entitled to compensation as calculated below. I dismiss the balance of the landlord's claim without leave to reapply. I find her entitled to recover her filing fee for this application pursuant to section 72 of the Act.

Refund of last month rent to V.D. and M.P.	1600.00
Refund of security deposit and pet deposit to all 3 tenants	2500.00
Less cleaning compensation to landlord	-185.00
Less filing fee to landlord	-100.00
Monetary Order in favour of tenants	3815.00

I note the two tenants who attended assured me they would divide up any monetary award appropriately among them. Since the evidence is that tenant C.L. did not pay his share of the last month's rent, I note he is entitled to compensation of \$800 less in the division.

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: November 06, 2018

Residential Tenancy Branch