



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNDCT FFL MNDCL

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:

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

This hearing was originally set to deal with the tenants’ application only, but it came to my attention during the hearing that the same parties had a second matter set for a hearing on February 21, 2019 to deal with the landlord’s application pertaining to this same tenancy. Both parties appeared, and with their consent, both applications were dealt with on December 17, 2018. Both parties 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 landlord and tenants were duly served with the Applications and evidence.

Issue(s) to be Decided

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

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This 12 month, fixed-term tenancy began on May 6, 2017, and ended on May 31, 2018 when the tenants moved out. Monthly rent was set at \$1,700.00. The landlord provided a copy of the tenancy agreement which indicates a fixed-term tenancy which was to end on May 31, 2018. The landlord had collected a security deposit in the amount of \$850.00 at the beginning of the tenancy, which was returned to the tenants.

The tenants testified that they had received a letter from the landlord notifying them that the landlord wished to move back into the rental home, and therefore would not be extending the fixed-term lease. The tenants provided a copy of this letter in their evidence, dated January 31, 2018, which stated: "I realize that your lease of this property expires April 30, 2018. We are willing to let you reside there a further two months, until June 30, 2018." The landlord also requested the complete use of the garage starting March 15, 2018. In compensation, the landlord stated "we will reimburse you the amount of \$100.00 rent back for each of the four months of March, April, May, and June 2018, with this amount to be paid to you on June 30, 2018."

The tenants allowed the landlord to utilize half of the garage, which the tenants testified that they had never received compensation for. The tenants testified that the landlord occupied over 50 percent of the garage space. The tenants are requesting compensation for April and May 2018 for the loss of the use of the garage space. The landlord did not dispute that they relinquished use of a portion of the garage, and that they never did compensate the tenants for that use.

The tenants submitted a monetary claim for \$1,900.00 in monetary compensation as set out in the table below:

Item	Amount
1 Month's Rent in compensation for End of Tenancy for Landlord's Use	\$1,700.00
\$100.00 x 2 months for loss of garage use	200.00
Total Monetary Order Requested	\$1,900.00

The tenants testified that they never received a formal Notice to End Tenancy from the landlord, and instead received a Mutual Agreement to End Tenancy for the tenancy to end at 1:00pm on June 1, 2018. Both parties confirmed in the hearing that no formal Notices to End Tenancy were ever issued by the landlord, nor was a Mutual Agreement ever signed by both parties. The tenants testified that due to the confusion, they started to look for new housing as the landlord expressed her wish to move back in, and they were concerned that due to the state of the housing market they would not find anything suitable. Once the tenants confirmed their new housing arrangements with their new landlord on May 6, 2018, the tenants notified the landlord immediately by way of text message that they plan on moving out at the end of the fixed-term tenancy on May 2018. The landlord responded that she wanted half a month's rent for June 2018 for the lack of notice. The tenants requested that the landlord serve them with a 2 Month Notice and compensate them with 1 Month's Rent in compensation in accordance with the *Act*

The landlord testified in the hearing that she was not aware of the new legislation about fixed-term tenancies, and in good faith requested that the tenants vacate the rental home due to the landlord's medical issues.

The landlord submitted a monetary claim as set out in the table below:

Item	Amount
Pro-Rated Property Taxes for June 2018	\$312.90
Water Bill- June 2018	34.18
Electric Bill – June 2018	44.78
Gas Bill – June 2018	59.65
Mortgage	495.81
Landlord's Rental Costs for June 2018	1,500.00
Total Monetary Order Requested	\$2,447.32

The landlord testified that the tenants' notice by text message on May 6, 2018 to move out by May 31, 2018 resulted in the above expenses as the landlord expected the tenancy to end in June of 2018.

Analysis

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord communicated to the tenants that she required the rental home for her own personal use, I find the landlord's letter to the tenants did not comply with section 52(e) of the *Act*. The tenants applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find that the tenants moved out at the end of fixed-term tenancy as requested by the landlord, and not as a result of receiving a 2 Month Notice pursuant to Section 49 of the *Act*. I find that the notice given to the tenants does not comply with section 52 of the *Act*, and the tenants moved out without applying to dispute this notice. On this basis, I am not allowing the tenants' application for monetary compensation pursuant to section 51 of the *Act* as the tenants agreed to vacate the rental suite and moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*. The tenants' application for monetary compensation in the amount of \$1,700.00 is dismissed without leave to reapply.

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 had failed to comply with the *Act* and tenancy agreement, which contributed to the tenants' loss.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenants to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I find that it was undisputed by both parties that the landlord had requested a change in the tenancy agreement, which involved a reduction in the value of their tenancy. I find that the tenants provided sufficient evidence to support the landlord's offer of compensation in the form of a rent reduction for the use of the garage space. Although it was disputed by both parties the exact portion of the garage that the landlord occupied, I find that it was undisputed that the landlord did occupy a portion of the garage as originally requested. I find that the tenants experienced a reduction in the value of the tenancy agreement, and are therefore entitled to monetary compensation for that loss of use. As the tenants did not give up full use of the garage, I allow the tenants \$50.00 in compensation for each of the months of April and May 2018 for total compensation in the amount of \$100.00.

Residential Tenancy Policy Guideline #30 addresses fixed term tenancies. Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term only in specific circumstances.

As noted in the Policy Guideline *"Transitional provisions in the Legislation apply this change retrospectively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances."* As such, this policy guideline retroactively applied to the tenancy agreement between both parties, regardless of whether the landlord was aware of this new legislation or not.

I find that the landlord did not give the tenants any formal notices to end this tenancy, nor did the tenancy agreement meet any of the provisions prescribed in section 13.1 of the Residential Tenancy Regulation. There is no mutual agreement to end this tenancy in effect, even though one was proposed. In accordance with the new legislation, the tenancy was to continue on a month-to-month basis until ended in accordance with the Act, regulation, and tenancy agreement.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and

(b) 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.

In the circumstance that the tenant is served with a 2 Month Notice for Landlord's Use under section 49 of the Act, the tenant may end the tenancy early.

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

As stated earlier in my decision, I find that the tenants were never served with a Notice under section 49 of the *Act*. I find that the tenants' notice to the landlord does not comply with section 45(1) of the *Act*.

While the tenants did notify the landlord of the termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlords 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 tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they

gave less than one month's notice as required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that she suffered a financial loss due to the tenants' failure to give proper notice under the *Act*. I have considered the sworn testimony of both parties, as well as the evidentiary evidence submitted. I am not satisfied that the landlord provided sufficient evidence to support that she had made efforts to mitigate the tenants' exposure to the landlord's monetary losses as claimed, as is required by section 7(2) of the *Act*. I find that the effective date of the proposed Mutual Agreement was June 1, 2018, and I find that the landlord was unaware of the new legislation, and therefore in her communication to the tenants, contributed to the confusion about when this tenancy must end. I find that the tenants failed to comply with the *Act*, but not entirely out of their deliberate or negligent actions, but rather out of response to the landlord's request for them to vacate the rental unit at end of the fixed term tenancy as stated on the tenancy agreement. I find that the tenants vacated the rental unit on the last date of the fixed-term tenancy as stated on tenancy agreement on the request of the landlord. I, therefore, dismiss the landlord's claim for a monetary order for the landlord's losses as the landlord has not sufficiently demonstrated that she had suffered a loss strictly due to the tenants' failure to comply with the *Act*. Rather, I find the landlord's own actions contributed to these losses claimed. I am also not satisfied that the landlord made efforts to mitigate the tenants' exposure to the losses claimed.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the landlord's application to recover the filing fee without leave to reapply.

As the tenants were partially successful in their claim, I allow the tenants to recover half of the filing fee for their application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$150.00.

The tenant(s) are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(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.

The remainder of the tenants' application is dismissed without leave to reapply.

The landlord's entire application is dismissed 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: December 20, 2018

Residential Tenancy Branch