Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT (Tenants)
FFL, MNDCL, MNDL, MNRL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application on August 10, 2018 (the "Tenants' Application"). The Tenants sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Landlords filed their application on August 19, 2018 (the "Landlords' Application"). The Landlords applied for compensation for damage caused to the rental unit, compensation for monetary loss or other money owed, to recover unpaid rent and for reimbursement for the filing fee.

The Tenants and the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord confirmed the correct spelling of the Landlords' last name and this is reflected in the style of cause.

The Tenants sought $26,400.00 "because of bad faith eviction". The Landlords were seeking compensation for damage to the rental unit, cleaning issues, loss of items from the rental unit and unpaid rent. The Landlord confirmed the Landlords' Application was not related to the security deposit for this tenancy. I dismissed the Landlords' Application with leave to re-apply given the Landlords' Application was made later than

the Tenants' Application and was not related to the issue before me in the Tenants' Application.

The Landlords' Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed she received the hearing package. She said she did not receive the Tenants' evidence.

Tenant T.B. testified that the evidence was in the same package as the hearing package. Tenant J.P. testified that the package was given personally to the Landlord's husband on August 14, 2018 at the home of the Landlords.

The Landlord testified that she opened the package and there was no evidence included in it. She agreed that her husband received the package and testified that he gave it to her and she opened it.

I asked the Tenants if they had submitted any evidence about what was in the package served on the Landlords and they advised they had not. I heard from the parties on whether the evidence should be admitted or excluded.

Rule 3.5 of the Rules of Procedure (the "Rules") states:

> At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with…all evidence as required by the Act and these Rules of Procedure.

It is the Tenants who had the onus to satisfy me that they served the Landlords with their evidence. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their version of events.

Here, the Landlord testified that she received a package containing the hearing package and no evidence. The Tenants testified that the evidence was in the same package as the hearing package. The Tenants provided no evidence to support their position. I do not consider the testimony of Tenant T.B. and Tenant J.P. to independently corroborate each other given both are Applicants in this proceeding and both were present

throughout the hearing to hear what each other testified to. In the circumstances, the Tenants have not met their onus to satisfy me that their evidence was served on the Landlords as required.

I excluded the Tenants' evidence as, in my view, it would be unfair to the Landlord to admit evidence that she said she had not received in circumstances where I am not satisfied that it was properly served.

The Tenants' evidence is excluded and has not been considered in this decision.

The Tenants testified that they did not receive the Landlords' evidence. Tenant J.P. testified that he received a USB with nothing on it.

The Landlord testified that the evidence was served on the Tenants by registered mail and confirmed it was on a USB. The Landlord testified that she never confirmed with the Tenants that they could view the files on the USB.

I asked the Landlord if there was evidence submitted in relation to the contents of the USB and the Landlord confirmed there was not. I heard the parties on whether the Landlords' evidence should be admitted or excluded.

Rule 3.10.5 of the Rules states:

> Before the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.
>
> …
>
> If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

In relation to the Landlords' evidence, it is the Landlords who have the onus to satisfy me that their evidence was properly served on the Tenants. The Landlord testified that the evidence was served on a USB. Tenant J.P. testified that the USB received had nothing on it. The Landlords did not submit any evidence in support of their position about service. Further, the Landlord acknowledged that she did not comply with rule

3.10.5 of the Rules. I determined that the Landlords' evidence should be excluded as admission of the evidence would have, in my view, been unfair in the circumstances.

The Landlords' evidence is excluded and has not been considered in this decision.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that Tenant J.P. had to be told numerous times throughout the hearing to stop interrupting and to stop disrupting the hearing to the point where I warned him that I would put him on mute if his behaviour continued.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started May 1, 2018 and was a month-to-month tenancy. Rent was $2,200.00 per month due on the 31st day of each month. The agreement is signed by Landlord J.K. and the Tenants. The parties agreed it was understood the Landlord was also a landlord in relation to the agreement.

The Tenants' Application indicates the tenancy ended June 16, 2018. The Tenants said this was the date they were put in a hotel.

I told the Tenants that they needed to advise me of what section of the *Residential Tenancy Act* (the "*Act*") they were relying on for their application. The Tenants were unable to point to what section of the *Act* they were relying on.

Tenant T.B. testified about calling the Residential Tenancy Branch and being advised that it is bad faith when there are renovations done to the rental unit and the landlord does not ask the tenants back. She referred to an online rental advertisement. She

mentioned that a friend followed up about this. She said the Tenants were evicted in bad faith.

I asked the Tenants to explain how the tenancy ended. Tenant T.B. testified about health problems experienced by her and her son. She said this lead to an ambulance being called and the fire department attending the rental unit. Tenant T.B. testified that the fire personnel told the Tenants they had to leave the rental unit immediately. She said the next morning a building inspector attended and deemed the rental unit unlivable. I understood Tenant T.B. to say the Landlords put the Tenants in a hotel and then assisted them in finding a new place to live.

The Tenants confirmed the Landlords never issued them a notice to end tenancy.

The Tenants testified about issues in the rental unit. The Tenants disputed the legitimacy of the building inspector that attended the rental unit. The Tenants said the Landlords told them they could move and could have their security deposit back. The Tenants testified about the circumstances of the move and issues with their belongings.

I asked the Tenants why they were claiming $26,400.00 and they said this was because the Landlords evicted them in bad faith.

The Landlord testified in relation to events leading up to the end of the tenancy. She said the Tenants told the Landlords the house was not safe to live in and the Landlords said the Tenants could move if the house was not safe. The Landlord testified that her husband arranged for the Tenants to stay in a hotel and helped them find a new place to live. I understood the Landlord to say that the Landlords did not want to end the tenancy and that the issue was the Tenants saying the house was unsafe to live in. I understood the Landlord to say a 10 Day Notice was served on the Tenants but no other notice to end tenancy. The Landlord testified that the rental unit remained empty until November 1, 2018 when it was re-rented. The Landlord said there were no renovations done.

In reply, the Tenants submitted that the Landlords did do renovations. The Tenants also disputed the testimony about the 10 Day Notice.

I asked the Tenants further questions about the basis for their claim. The Tenants advised that the $26,400.00 was 12 months rent and confirmed they were relying on the

legislative changes which came into force in May in relation to notices to end tenancy for landlord's use of property and renovations.

Analysis

Pursuant to rule 6.6 of the Rules, the Tenants as applicants have the onus to prove they are entitled to the compensation sought.

The Tenants were unable to point to what section of the *Act* they were relying on for their claim. I note that I found the testimony and submissions of the Tenants confusing and unclear.

The legislative changes that came into force in May of 2018 related to notices to end tenancy issued under section 49 of the *Act* for landlord's use of property. The changes also affected section 51 of the *Act* and added section 51.2 and 51.3 of the *Act*. These sections states as follows:

> 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.
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> …
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> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
>
> > (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

…

Right of first refusal

51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

(2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant

(a) a notice of the availability date of the rental unit, and

(b) a tenancy agreement to commence effective on that availability date.

(3) If the tenant, on or before the availability date, does not enter into a tenancy agreement in respect of the rental unit that has undergone the renovations or repairs, the tenant has no further rights in respect of the rental unit.

(4) A notice under subsection (1) or (2) must be in the approved form.

Tenant's compensation: no right of first refusal

51.3 (1) Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2).

…

[emphasis added]

A notice to end tenancy issued under section 49 of the *Act* must comply with section 52 of the *Act* pursuant to section 49(7) of the *Act*.

Section 52 of the *Act* sets out the requirements for a notice to end tenancy issued under the *Act* and states:

> Form and content of notice to end tenancy
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> 52 In order to be effective, a notice to end a tenancy 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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
>
> (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
>
> (e) when given by a landlord, be in the approved form.

Whether the Tenants are relying on section 51 or section 51.3 of the *Act*, they are not entitled to the compensation sought for numerous reasons. However, the primary reason is that the Tenants were never served with a notice to end tenancy under section 49 of the *Act*. The Tenants acknowledged this. This is a precondition to the Tenants being entitled to compensation under section 51 of the *Act*. It is also a precondition to section 51.2 of the *Act* applying. Further, section 51.3 of the *Act* only applies when tenants have given notice under section 51.2(1) of the *Act* which could only apply where the tenants have received a notice to end tenancy under section 49 of the *Act*. Here, the Tenants received no such notice.

I note that the testimony and submissions of the Tenants are largely irrelevant given their acknowledgement that they were never served with a notice to end tenancy which is a precondition to the relevant portions of the *Act* applying. Therefore, I have not addressed the further testimony and submissions in this decision.

Given the Tenants were not served with a notice to end tenancy under section 49 of the *Act*, they are not entitled to compensation under section 51 or 51.3 of the *Act*. The Tenants did not point to any other basis on which they are entitled to the compensation sought. In the circumstances, the Tenants' Application for compensation is dismissed without leave to re-apply.

Given the Tenants were not successful in this application, I decline to award them reimbursement for the $100.00 filing fee.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 03, 2019

Residential Tenancy Branch