Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNBAR RYERSON UNITED CHURCH and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

- Compensation for damages or compensation for loss or other money owed pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both the tenants and the landlord attended the hearing. The tenants were represented by the tenant CL ("tenant"), while the landlord was represented by RM ("landlord"). The landlord confirmed that he received the tenant's notice of hearing package and evidence. I find the landlord was served with these documents in accordance with the *Act*. No documentary evidence was submitted by the landlord. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues are referenced in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

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

Background and Evidence

A copy of the tenancy agreement signed in December 2014 was entered into evidence. The tenancy began in January 2015 as a one-year fixed term tenancy continuing as a month to month tenancy following the conclusion of the one-year term. Initial rent was

set at $3,380.00 per month increasing to $3,580.00 per month over the course of the tenancy. A security deposit paid at the outset of the tenancy was returned in its entirety at its conclusion.

On February 6, 2018 the tenant's neighbour received a letter from the landlord advising them that the landlord has received approval in principle for redevelopment of the property. The tenants themselves received a copy of this same letter approximately one month later in March 2018. The letter states:

"Assuming our rezoning process is completed and we receive our development permit, we will need to take possession of the Rental House on December 31, 2018. If you find suitable accommodation in advance of that time please advise us and we will accept the surrender of your tenancy agreement on the date that works for you".

The letter goes on to state that if the tenants agree to a (tenancy) termination date effective in November or December 2018 and enter into a Mutual Agreement to End Tenancy, the landlord will provide the tenant with a moving and relocation allowance equivalent to two months' rent upon vacating the premises.

The tenant testified that upon receipt of the letter, he emailed his property manager seeking to stay in the property until February or March of 2019 as it would be difficult and inconvenient to move-out in December 2018. The tenant testified he experienced difficulty in getting an answer from the property manager as the property manager was not well informed by the committee charged with the property redevelopment.

In an email from the property manager to a committee member dated April 13, 2018, the tenants sought clarification regarding ending the tenancy earlier than November or December 2018. 3 options were presented by the committee member:

1. Leave in November or December – receive 2 months compensation
2. Stay, be served with a Two Month Notice to End Tenancy – receive 1 month compensation
3. Move out voluntarily, before November or December – without compensation.

An email exchange took place on July 4, 2018 whereby the tenant asked the property manager; whether he could stay until the end of February 2019; how much notice the landlord would require; and what consequences would result from providing notice to end tenancy halfway through the month. The landlord's property manager responded he would require 30 days clear notice to vacate the property. The other questions went unresolved as the property manager had not received clear instructions from the committee.

On July 20, 2018, the tenant advised the property manager he had found, "*a great house and have signed a lease with them to start on August 15th*" The tenants gave notice that they would vacate the rental unit on August 31, 2018. The tenants' notice

asked for a return of the security deposit, which they confirmed was given to them following the conclusion of the tenancy.

The landlord testified that the letter sent on February 6, 2018 was not a formal notice to end tenancy but rather an advisory letter to inform the tenants on the redevelopment of the property. In February 2018, they were not in a position to serve the tenant with a Notice to End Tenancy for Landlord's Use of Property since they did not yet have the development permits in place as is required by the *Act*. The landlord testified that in early 2018, he anticipated that he would be in a position to develop the property by the end of the year.

Analysis

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:

1.) the existence of the damage/loss;
2.) that the loss 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;
3.) the claimant must then provide evidence to verify the actual monetary amount of the loss or damage.; and
4.) The claimant must also show what steps were taken, if any, to mitigate the damage or loss.

The tenant bears the burden of proving that there has been a violation of a term of the tenancy agreement or a contravention of the *Act*.

Turning first to the tenancy agreement: no clause in the tenancy agreement indicates the landlord is required to compensate the tenant when the tenant chooses to end the tenancy after giving notice in accordance with the *Act*. The email communication from the tenant to the landlord on July 20, 2018 clearly shows the tenants found "*a great house and have signed a lease with them to start on August 15th*". The tenants voluntarily chose to leave the rental unit when they found this suitable alternate housing. The tenants chose option 3 from the landlord's email dated April 13, 2018.

Section 51(1) of the *Act* states:

> 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.

The advisory letter of February 6, 2018 is not a formal notice to end tenancy. The tenant was never served with a notice to end a tenancy under section 49 of the *Act*. Having not been served with notice, the tenant is not entitled to compensation under section 51.

I find that the tenant has failed to establish a claim for damage or loss pursuant to section 67 of the Act and I dismiss the tenant's claim.

As the tenants were not successful in their application, the filing fee will not be returned.

Conclusion

The tenants' claim is dismissed.

The tenants must bear the cost of their own filing fee.

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: February 19, 2019

Residential Tenancy Branch