



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*, and
- a Monetary Order as compensation for damage or loss pursuant to section 67 of the *Act*.

Both parties attended the hearing and 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. The landlord was represented at the hearing by his agent, A.G. (the "landlord").

The landlord confirmed receipt of the tenants' application for dispute and is found to have been duly served in accordance with section 89 of the *Act*. No evidence was submitted by the tenants or the landlord.

Preliminary Issue – Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of some issues currently under dispute at this time:

1. Both parties entered into a mutual agreement that this tenancy will end on March 31, 2019 at 1:00 P.M., by which date the tenants and any other occupants will have vacated the rental unit.
2. The tenants agreed to pay rent to pay in its entirety for March 2019.
3. Both parties acknowledged that this settlement agreement constituted a final and binding resolution of all portion of the tenants' applications before me today, save their application for a monetary award.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Background and Evidence

Testimony provided by the tenants explained this tenancy began on September 15, 2018. Rent was \$1,350.00 per month while a security deposit of \$675.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants said they were seeking a monetary award of \$1,850.00. Specifically they applied for \$500.00 for "inconvenience" and a return of one month's rent for \$1,350.00. When asked to explain their monetary award the tenants argued they did not feel the one month notice they received as "fair" and they noted the financial difficulties a move would place on them. The tenants described a difficult relationship with the landlord which resulted from their inability to receive mail directly to their suite. The tenants said these difficulties had led to the issuance of the one month notice.

The landlord disputed that any monetary award should be granted to the tenants. The landlord alleged several months of unpaid rent remained outstanding and argued that all mail was provided to the tenants in an expedient manner.

Only oral testimony was presented at the hearing by the tenants. The tenants did not submit any documentary evidence with their application.

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 the existence of the damage/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 entitlement to a claim for a monetary award.

The tenants argued they were entitled to a monetary award of \$1,850.00 representing expenses related to moving and a return of one month's rent. The tenants detailed their concerns with the rental property and highlighted the manner in which they felt the landlords had failed to provide them with sufficient access to their mail.

Residential Tenancy Policy Guideline #16 provides further guidance on when a monetary award will be granted. It states as follows:

In order to determine whether compensation is due, the arbitrator may determine whether –

- *A party to the tenancy agreement has failed to comply with the Act, regulations or tenancy agreement;*
- *Loss or damage has resulted from this non-compliance;*
- *The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

After having considered the testimony provided at the hearing by the tenants, I find the tenants have failed to demonstrate loss as described above. A landlord is entitled under the *Act* to issue a Notice to End Tenancy when they feel it may be warranted. The tenants did not produce any documentary evidence in support of the expenses related to moving from the property, furthermore, I find the testimony of the tenants fails to demonstrate non-compliance with the *Act*, or Tenancy Agreement. For these reasons, I dismiss the tenants' application for a monetary award.

Conclusion

This tenancy shall end by way of Mutual Agreement to End Tenancy at 1:00 P.M. on March 31, 2019. Should the tenants fail to vacate the property by this time the landlord may enforce this Order in the Supreme Court of British Columbia

The tenants' application for a monetary award 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: February 8, 2019

Residential Tenancy Branch