



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for the cost of emergency repairs, pursuant to section 33.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties attended at the hearing and the landlord confirmed receipt of the notice of dispute resolution package by courier on October 20, 2018. While this does not conform to the service requirements of section 89 of the *Act*, I find that, pursuant to section 71 of the *Act*, the landlords were sufficiently served for the purposes of this *Act* as they confirmed receipt of the package.

Preliminary Issue- Tenants' Evidence

The tenants uploaded evidence to the Residential Tenancy Branch on February 4, 2019, eight days before the hearing. The tenants testified that they put their evidence package in the landlord's mailbox on February 1, 2019. The landlord testified that they did not receive the tenant's evidence package.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

I find that since the tenants' evidence was uploaded only eight days before the hearing, not the required 14, and since the landlords testified that they did not receive the tenants' evidence at all, the tenants evidence is not admitted and will not be considered.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for the cost of emergency repairs, pursuant to section 33 of the *Act*?

Background and Evidence

Both parties provided testimony during the hearing. In this decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to the points which are essential in order to determine whether or not the tenants are entitled to a Monetary Order for damage or compensation or emergency repairs. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agreed to the following facts. This tenancy began in November of 2015 and ended on September 15, 2018. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the landlord and was returned to the tenants at the end of the tenancy. The subject rental property is a house with a lower and upper suite. The tenants rented the lower suite which had two bedrooms. The upper suite was rented to different tenants.

The landlords testified that he issued the tenants a 10 Day Notice to end tenancy with an effective date of September 15, 2018, in August 2018 because major repairs were required to the subject rental property. The 10 Day Notice was not entered into evidence. The landlord testified that he ended the tenancy because major plumbing work was required which necessitated vacant possession of the subject rental property.

The tenants testified that on August 14, 2018 the landlord served them with a One Month Notice with an effective date of September 15, 2018, to end tenancy for major repairs. The One Month Notice was not admitted into evidence.

The tenants testified that the landlord should have served them with a Four Month Notice to End tenancy for renovation or repair which would entitle them to receive one free months' rent. The tenants are seeking to recover one months' free rent in the amount of \$900.00.

The tenants testified that when they moved into the subject rental property they were not provided with a back-door key and the door knob to one of the bedrooms did not have a lock. The tenants testified that they asked the landlords to replace the door knobs and to provide them with keys but the landlords refused. The tenants testified that the landlords later agreed to reimburse the tenants for the cost of replacing the door knobs and acquiring new keys. The

tenants testified that after they spent \$40.00 replacing the approved door knobs, the landlords refused to pay them back.

The landlords testified that they never agreed to replace the door knobs or pay the tenants back for the replacement of the door knobs. The landlord testified that the tenants had already lived at the subject rental property for two and a half years when they requested the locks and door knobs be changed. The landlord testified that the tenants only wanted their locks changed because they subletted the second bedroom without his permission and wanted the second bedroom to have a lock for the renter of the second bedroom.

The tenants did not dispute the landlords' testimony regarding the subletted second bedroom but testified that another reason they wanted to change the locks was because on one occasion, the tenants from the upper suite entered their suite without their permission to flip a breaker.

Tenant M.M. testified that she also wanted new locks because on one occasion, the landlord sexually harassed her by attempting to touch her without her permission. Tenant M.M. testified that she did not feel safe and wanted new locks. Tenant R.M. testified that he was unaware of this incident. The landlord did not speak to tenant M.M.'s accusations.

Analysis

Section 51(1) of the *Act* states that 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.

I find that since the tenants did not receive a notice to end tenancy under section 49 of the *Act*, they are not entitled to recover compensation under section 51(1) of the *Act*.

I note that both a 10 Day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for Cause are incorrect notices to end tenancy for renovation or repair. Had either of these notices been disputed by the tenants on the grounds that the incorrect notice to end tenancy had been served upon them, they would likely have been successful in their application. However, in this case the notice to end tenancy was not disputed and the tenants voluntarily ended the tenancy by moving out.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

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, regulation 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.

I find that the tenants have failed to prove the amount of or value of the damage or loss for the door knobs and keys as no receipts for the repair work was accepted into evidence. I therefore dismiss the tenants' claim for \$40.00 for the repair/replacement of the door knobs, locks and keys.

Conclusion

I dismiss the tenants' application 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 13, 2019

Residential Tenancy Branch