



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding PROLINE PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes CNR, MNDCT, OLC, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 4, 2018 ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on January 24, 2019 lasted approximately 11 minutes and the "second hearing" on March 11, 2019 lasted approximately 74 minutes. At the second hearing, both parties confirmed that they were ready to proceed and they did not have any further adjournment requests.

The landlord's two agents, "landlord CA" and "landlord SL," and the two tenants (male and female) attended both hearings. The landlord's agent, "landlord AH" attended the first hearing only. The landlord's agent, landlord KD ("landlord") attended the second hearing only. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, landlord AH and the landlord confirmed that that they had permission to speak on behalf of the landlord company named in this application. At both hearings, landlord CA and landlord SL confirmed that they were the landlords for the tenants and the former owners of the rental unit, as they have now sold the property to new owners.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on January 24, 2019 was adjourned by consent of both parties, due to the landlord's father passing away. By way of my interim decision, dated January 24, 2019, I adjourned the tenants' application to the second hearing date of March 11, 2019. I notified both parties that they could continue to serve evidence in accordance with the timelines set out in the Residential Tenancy Branch *Rules of Procedure*. Both parties confirmed receipt of my interim decision after the first hearing. No substantive testimony regarding the tenants' application was heard from either party at the first hearing.

At both hearings, the landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package. Both parties confirmed that they had not served or received any further evidence after the first hearing on January 24, 2019.

At the outset of the second hearing, the tenants confirmed that they had vacated the rental unit so they were not seeking to cancel the 10 Day Notice or an order to comply. They also confirmed that they were not seeking the return of their security deposit \$1,100.00 since the landlord had already returned it to them. Accordingly, these portions of the tenants' application are dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the second hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2016 and ended on January 6, 2019. Monthly rent of \$2,280.00 was payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlord returned the deposit to the tenants. Both parties signed two written tenancy agreements for this tenancy.

Both parties agreed that the tenants vacated the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 26, 2018 ("2 Month Notice"). The notice had an effective move-out date of January 31, 2019. Both parties agreed that the reason indicated on the notice was:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenants seek a monetary order of \$5,700.00 for a loss of quiet enjoyment, plus the \$100.00 filing fee. The landlord disputes the tenants' claim.

The tenants seek \$1,220.00 for the days when a contractor was in their rental unit in September 2018, full rent of \$2,200.00 for October 2018, and full rent of \$2,280.00 for November 2018. The tenants confirmed that their rent was increased from \$2,200.00 to \$2,280.00 in November 2018. The tenants maintained that the landlord told them that the rental unit was not being sold and then the landlord showed up with realtors for an appraisal to be done because they decided they wanted to sell. They claim that they gave access to the landlord and contractors to renovate one room in the rental unit because of asbestos, and they lost the use of that room for five to six weeks. The tenants explained that they made new keys for the realtors to access the rental unit, they cleaned up for showings, they repaired damages and painted the bathroom, and they rearranged a birthday party to show the unit, which they said was difficult with four children to look after. They said that the landlord had numerous showings of the unit.

The tenants claimed that they dispelled with written notice from the realtors and believed that the realtor or property manager on behalf of the landlord seller was always present with the potential buyers when viewing the rental unit. The tenants maintained that when the female tenant arrived home one day, she found the buyer's agent, the home inspector and the new owners in the rental unit, but not anyone on behalf of the landlord seller, so the place was left unsecure in their absence.

The tenants testified that they received eviction notices from the landlord, in order to force them to move, so that the landlord could sell the rental unit. They claimed that they went on vacation, left their four children at home with other people, and when they returned home, they found the 10 Day Notice on their door. They stated that they paid their rent on time, they had given the landlord a post-dated cheque for December 1, 2018, which the landlord deposited on December 5, 2018, and then the landlord withdrew the 10 Day Notice after. They stated that when they received the 2 Month Notice, they told the realtors that they were vacating early on January 6, 2019 so the landlord could move the sale date ahead for the new owners.

The landlord said that the contractors were in the tenants' rental unit from September 17 to October 2, 2018, for a period of 15 days, in order to fix the front and basement walls, due to the tenants' complaints of a musty smell, so they had to remove part of the wall. The landlord agreed that the tenants lost the use of the room but stated that it was only a workshop area in the basement with minimal use for the tenants, so the landlord agreed to pay the tenants \$100.00 for this loss of use. She said that the square footage of the area in the rental unit was only 5% so she calculated it as follows: \$2,200.00 monthly rent/30 days in September 2018 = \$73.33 x 15 days x 5% = \$55.00 which the landlord "rounded up" to \$100.00.

The landlord stated that there were only five days of showings in October 2018 and six days of showings in November 2018. She said that this was not an unreasonable number of showings. She claimed that she did not know that an agent of the landlord seller had to be present during the showings of the rental unit, as claimed by the tenants.

The landlord explained that the tenants lived at the rental unit for 26 months and they were late with rent for 15 months and the water bill was never paid on time. She said that the landlord forgave one day of rent plus carpet cleaning. She said that a 1 Month Notice to End Tenancy for Cause was issued because she felt that the tenants interfered with the sale of the rental unit.

The landlord agreed that she entered the tenants' backyard in order to remove an oil tank without their knowledge or permission and agreed to pay the tenants \$200.00 for this breach. The landlord agreed to pay the tenants \$150.00 for inadvertently removing the tenants' plants while performing gardening work at the rental unit.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties.

I award the tenants \$100.00 for the loss of use of one room in the basement of the rental unit, while the contractors were working there from September 17 to October 2, 2018. The landlord agreed to pay this amount during the hearing. I find that this is reasonable given the square footage and minimal use of the room, which the tenants did not dispute. The tenants were unable to remember the dates that the work occurred or for how long it lasted.

I award the tenants \$200.00 for the landlord's failure to provide written notice in accordance with the *Act*, in order to enter the rental property and remove the oil tank in the backyard. The landlord agreed to pay this amount during the hearing. I find that this is more than reasonable and the tenants failed to show how this specific breach caused them a specific amount of loss.

I award the tenants \$150.00 for the landlord's removal of the tenants' plants at the rental property. The landlord agreed to pay this amount during the hearing. I find that this is more than reasonable and the tenants failed to show the specific value of the plants that were removed.

I dismiss the remainder of the tenants' monetary application without leave to reapply. I do not find that 11 days of showings at the rental unit, is an unreasonable amount. The tenants did not dispute this number of showings. The landlord is entitled to show the

rental unit in order to sell it, while preserving the tenants' right to quiet enjoyment. The tenants chose to make keys for the realtor in order to provide access, but they were not required to do so. The tenants cleaned the rental unit for showings but tenants are required to maintain a standard of cleanliness throughout their tenancy as per section 32 of the *Act*.

The tenants failed to show that their belongings were unsecure when only the buyer's agent was present for one showing, not the seller's agent. The tenants did not show that they lost any items or suffered a specific amount of loss for this one showing. The landlord is permitted to issue notices to end tenancy if there are breaches of the *Act*, the landlord said that the 10 Day Notice was withdrawn, and the tenants failed to justify a specific amount of loss for this claim.

As the tenants were only successful in the claims that the landlord agreed to pay them, I find that the tenants are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$450.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

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: March 25, 2019

Residential Tenancy Branch