



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant intended to call her mother as a witness at this hearing but chose not to do so at the end of the hearing, stating that she was not required and she did not want to adjourn this matter to a later date to complete the testimony. The witness initially called into the hearing, was excluded from the outset, and did not testify. This hearing lasted approximately 62 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and tenants confirmed receipt of the landlord's 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 the tenants were duly served with the landlord's evidence package.

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, 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. During the hearing, the female tenant read out from a written statement. The tenants spoke for longer than the landlord, at approximately 40 minutes.

Both parties agreed to the following facts. This tenancy began on September 1, 2016 and ended on June 30, 2017. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$500.00 were paid by the tenants and the landlord returned both deposits in full to the tenants. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy.

The tenants stated that they suffered harassment and extortion by the landlord, which forced them to move out of the rental unit. They seek \$274.31 for a moving truck. They seek \$20.38 to produce photographs for this application and \$5.00 they paid to obtain a police report from June 30, 2017. They seek lost work wages of \$343.33 in order to take time off from work in order to move, complete the move-out condition inspection with the landlord, and be present during viewings of the unit to prospective new tenants because they wanted to safeguard their items. The tenants provided mainly redacted pay stubs to support their lost wages claim. The tenants seek a refund of their last month's rent for June 2017 of \$1,400.00, due to the amount of prospective new tenant viewings that the landlord did at the rental unit, the 24 hours off work for both tenants, and the tenants being asked to pay utilities which was included in their rent and which they confirmed they never paid extra to the landlord.

The tenants claimed that they suffered a loss of quiet enjoyment of \$5,000.00 because they had continuous problems with the landlord throughout their tenancy. They stated that they found previous Residential Tenancy Branch ("RTB") decisions online from other unrelated hearings, awarding \$5,000.00 for a loss of quiet enjoyment but they did not provide copies of same for this hearing. They stated that they set up a video surveillance system inside their rental unit, which captured footage of the landlord entering their rental unit alone, taking photographs of their belongings, and going into their bedroom which was off-camera since only the kitchen footage was visible. They explained that the landlord violated their privacy and they did not feel safe living there. They maintained that they called the police twice, once was during the move-out condition inspection on June 30, 2017, but there were no charges laid or arrests made

of the landlord. They said that the landlord was being difficult about signing the move-out condition inspection report, she threatened to charge the tenants for damages that did not exist because she wanted them to sign the report, and the female tenant's mother was present during the inspection to help the tenants read through and sign the report. The tenants explained that they waited until December 10, 2018, almost 1.5 years after the end of the tenancy on June 30, 2017, to file this application because it was difficult for them to talk about the landlord's wrongful behaviour.

The landlord disputes the tenants' entire application. She claimed that she did not harass the tenants during their tenancy. She maintained that the rental unit was clean when the tenants vacated, so she returned their security and pet damage deposits in full to them. She said that the tenants were lying about their application, they were running a "scam" that they planned, and that is why they were reading from a script during the whole hearing. She stated that during the move-out inspection, the tenants were yelling and arguing with her, and they refused to sign the move-out condition inspection report. She explained that the tenants harassed her and caused her stress.

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 applicant 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.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' entire application of \$7,049.02 without leave to reapply.

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. The tenants did not receive a notice to end tenancy on a RTB approved form, for them to move. The tenants did not file an RTB application indicating that they were being forced to move out at the time that they vacated. I find that they incurred moving costs, which they would in any event, when leaving the rental unit. The fact that the tenants chose to leave when they did, was up to them. Further,

the tenants are not required to attend showings of prospective new tenants, as they are entitled to be there but not required. They can also have an agent attend on their behalf. Therefore, the moving expenses of \$274.31 and lost wages of \$343.33 are the tenants' own costs to bear, and these portions of their application are dismissed without leave to reapply.

The tenants' application for \$20.38 for producing photographs and \$5.00 for the police report, are dismissed without leave to reapply. The only hearing-related costs recoverable under the *Act* are for filing fees.

The tenants' application to recover their June 2017 rent of \$1,400.00 and a loss of quiet enjoyment of \$5,000.00, are dismissed without leave to reapply. The tenants did not provide copies of the previous RTB decisions that they reviewed, which they said are comparable to their case, awarding \$5,000.00 for a loss of quiet enjoyment. In any event, I am not bound by previous decisions made by other Arbitrators in different cases. The tenants claimed that the landlord harassed and extorted them; however, these are criminal claims that are not within my jurisdiction of tenancy-related matters at the RTB. No charges were filed and no arrests were made by the police when the tenants called them twice, including on the move-out condition inspection date of June 30, 2017, as per the tenants' testimony. Further, the tenants did not pay for any extra utilities, which they said the landlord demanded from them.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' entire 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: April 1, 2019

Residential Tenancy Branch