



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* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant R.F. attended and confirmed that she spoke on behalf of both the tenants.

As both parties were present, service of documents was confirmed. Tenant R.F. testified that she served the landlords individually with the notice of this hearing and evidentiary materials by Canada Post registered mail, which was confirmed received by the landlords. The landlords testified that they served the tenants with their evidentiary materials by Canada Post registered mail and one document by regular mail, which was confirmed received by the tenants.

Based on the undisputed testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as compensation pursuant to section 51 of the *Act*?

Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into evidence. During the hearing, the parties confirmed the following terms of the tenancy:

- The tenancy began October 1, 2017 as a month-to-month tenancy.
- Monthly rent of \$1,300.00 was payable on the first day of the month.
- The tenancy ended on August 1, 2018 when the tenants moved out of the rental unit and returned vacant possession to the landlords.

The parties were unsure of the exact date, but all agreed that the tenants were personally served with a Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) between May 28 and May 31, 2018. The Two Month Notice required them to vacate the rental unit by August 1, 2018. The Two Month Notice submitted into documentary evidence by the tenants, dated May 28, 2018, stated the reason for ending the tenancy as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenants did not dispute the notice to end tenancy, but instead vacated the rental property in accordance with the effective vacancy date provided on the notice.

The tenants alleged that the landlords did not use the property for the stated purpose after the tenancy ended, as they claim that the rental unit was left vacant rather than being inhabited by the landlords, and that the landlords listed the rental unit for sale in mid-November 2018. The tenants submitted documentary evidence showing the rental property advertised for sale, photos from the real estate listing showing the rooms empty of furniture, and an email from the real estate agent stating that the property was "vacant".

The landlords testified that from August 1 to September 1, 2018, the unit was empty and as such they did some maintenance and painting in the rental unit. The landlords

confirmed that they listed the rental unit for sale on November 16, 2018 but testified that they have stayed at the rental unit on an occasional basis since regaining possession of the rental unit on August 1, 2018. The landlords confirmed that they still owned the rental unit and that it had not been re-rented. The landlords testified that one of the landlords has been living full-time in the rental unit since January 2019.

Analysis

In this matter, the tenants are seeking compensation under section 51 of the *Act*, which states as follows:

- 51(1) 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.
 - (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
 - (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating

circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenants' claim rests on the assertion that the landlords did not use the rental unit for the stated the reason for ending the tenancy, which was provided as follows:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Black's Law Dictionary ninth edition defines the legal meaning of the word "occupant" as:

Occupant. 1. One who has possessory rights in, or control over, certain property or premises...

In other words, being an occupant of a premises does *not* require a person to "reside" or to "live in" the premises, in the sense of someone sleeping, making meals, watching TV, and all of the ordinary daily activities that we do while living in a home. Under the *Act*, a landlord need only occupy the rental unit, meaning that the landlord maintains possessory rights and control of the rental unit. Therefore, the *Act* does not require that landlord live in the rental unit, however, the landlord may not allow someone other than their close family to live in, or to have possession or occupation of the rental unit, by renting the rental unit out to new tenants or by transferring ownership of the rental unit to someone else through the sale of the property, for example.

In this case, there is no dispute that the landlords listed the rental property for sale, however, they did not sell the property and as such remained in possession of the rental unit for the required minimum of six months under the *Act*. As well, there was no evidence introduced that the landlords re-rented the unit to any other tenants. The landlords contended that they continued to visit and occasionally stay at the rental unit from the time the tenancy ended until the date of the hearing. During the hearing, landlord A.B. testified that she was calling into the hearing while sitting at the kitchen table in the rental unit.

Although the issue of good faith intention was raised in the hearing, intention is not a factor for consideration in this claim. Good faith intention is only a consideration if a tenant is disputing a Two Month Notice, not when seeking statutory compensation pursuant to section 51 of the *Act*. Under section 51 of the *Act*, the only considerations are whether the rental unit was actually used for the stated purpose provided on the Two Month Notice, which in this case is whether the rental unit was occupied by the landlords, and if not, were there extenuating circumstances for not doing so.

Based on the testimony and evidence of both parties, on a balance of probabilities, I find that the tenants have failed to provide sufficient evidence to meet the burden of proving their claim that the landlords failed to occupy the rental unit for at least 6 months' duration after the tenancy ended, as required by section 51 of the *Act*. Therefore, I dismiss the tenants' application in full without leave to reapply.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the cost of the filing fee in the amount of \$100.00 from the landlords.

Conclusion

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: May 22, 2019

Residential Tenancy Branch