



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's 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 two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 47 minutes.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence package.

Issues to be Decided

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

Is the tenant 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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2017 and ended on February 9, 2019. Monthly rent of \$1,456.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$250.00 were paid by the tenant and the landlord returned both deposits to the tenant.

Both parties agreed that the tenant vacated the rental unit pursuant to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated January 15, 2019 ("4 Month Notice"). The notice has an effective move-out date of May 31, 2019. The landlords confirmed that the tenant received one month free rent compensation pursuant to the notice. The tenant stated that while she initially applied to dispute the 4 Month Notice in this application, she amended her application to remove this relief, because she was moving out of the rental unit.

The tenant seeks compensation under section 51(2) of the Act for 12 months' rent compensation of \$1,500.00 each month totaling \$18,000.00. The tenant also seeks moving costs of \$773.50, items for her new place of \$284.38, gas moving costs of \$302.90, mail forwarding of \$87.83, and food and miscellaneous expenses of \$1,160.36.

The tenant claimed that because the landlords have not used the rental unit for the stated purpose on the 4 Month Notice, she is entitled to compensation. A copy of the 4 Month Notice was provided for this hearing. Both parties agreed that the reasons indicated on the notice are:

- *Convert the rental unit to a non-residential use; and*
- *No permits and approvals are required by law to do this work.*

The tenant stated that the landlords did not use the rental unit for the purpose in the 4 Month Notice. She claimed that the landlords told her that the rental unit was being used for storage and office space. She said that the landlords have multiple properties that could be used for these purposes. She explained that the landlords maintain a garden at the property, they did the gutters, they got the stove working again, they remodeled the unit, and they cannot leave it without heat or water especially in the winter. She maintained that she has not seen anyone living in the rental unit but she did

not believe that they were upgrading the unit just for office and storage space. The tenant seeks moving costs, including for gas, food, movers, new items, and mail forwarding, because she had to move out pursuant to the 4 Month Notice. She provided receipts for same.

The landlords dispute the tenant's application for 12 months' rent compensation based on the 4 Month Notice. They claimed that they converted the rental unit to non-residential use and that they followed the reason in their 4 Month Notice issued to the tenant. They maintained that no one lives or rents the unit, they use it for storage and office space, it is their choice to use it for this purpose regardless of how many other properties they own, and they know how to winterize their properties. They explained that the tenant would have had to incur moving costs regardless of when she moved.

The tenant also seeks reimbursement of food costs because her stove was broken and the landlords failed to fix it. She said that this was one of reasons she moved out of the rental unit so quickly. She claimed that her burners melted, the stove could not be used, she had to get take-out food, and the landlords were responsible for these costs. She provided receipts for same. She stated that the landlords purchased new burner parts and gave them to her to install but she could not do so and the landlords failed to install it.

The landlords dispute the tenant's claim for reimbursement of food costs. The landlords stated that the stove was new in 2016 and was used by the previous tenants for about five to six months before the tenant moved in January 2017. The landlords maintained that the tenant damaged two burners in the stove in March 2017, the tenant said she would replace them but failed to do so, but the tenant still used three of the remaining burners to cook food. The landlords claimed that they purchased two new burner parts and gave them to the tenant to install, even though the tenant caused this damage. They explained that the tenant installed the burners and they fit, she sent photographs to the landlords of same, and she advised them it was working.

Analysis

Section 49(6) of the *Act* states that landlords may end a tenancy in respect of a rental unit where the landlords intend to convert the rental unit to a non-residential use. Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 4 Month Notice issued under section 49(6) of the *Act*. Section 51(2) states:

51 (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.

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. The tenant vacated the rental unit pursuant to the 4 Month Notice. I find that the tenant provided insufficient evidence to show that the landlords did not convert the rental unit for non-residential use. She claimed that she had no proof that the rental unit was occupied by other people but questioned why the landlord would use the unit for office and storage space if they have multiple other large properties and offices. I accept the landlords' testimony that they converted the rental unit into storage and office space, which is a non-residential use, and they continue to do so. Therefore, I find that the landlords used the rental unit for the reason indicated in the 4 Month Notice.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for 12 month's rent compensation of \$18,000.00, under section 51(2)(b), without leave to reapply.

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 on a balance of probabilities. In this case, to prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the remainder of the tenant's application for \$2,608.97, without leave to reapply. The tenant, on her own accord, vacated the rental unit earlier than the effective date on the 4 Month Notice, claiming that she had to leave quickly because of the stove issue. I find that the stove issue was caused by the tenant. She did not pursue a dispute of the 4 Month Notice, amending her application to remove this relief. The tenant would have incurred these moving costs when she decided to move from the rental unit. The landlords are not responsible for these moving costs.

I find that the tenant caused damages to the stove burners and despite this, the landlords purchased burners and provided them to the tenant. The tenant's failure or inability to install these burners, is her own issue, as she is responsible for this damage. Therefore, I find that the tenant is not entitled to food costs from the landlords.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's 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: August 08, 2019

Residential Tenancy Branch