



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL**

FFT MNDCT

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the Residential Tenancy Act ("Act").

The landlords applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

The tenants applied for:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

Both of the landlords attended the hearing, the landlord SB spoke on behalf of the landlords. Both of the tenants attended the hearing, the tenant LM spoke on behalf of the tenants. All parties acknowledge receipt of each others' Applications for Dispute Resolution and confirm there are no issues with timely receipt of evidence.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties

to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Are the landlords entitled to a monetary order and/or an order to recover the filing fee?
Are the tenants entitled to a monetary order and/or an order to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was entered as evidence. The tenancy agreement for this single-family home was signed in late November 2017 for a fixed 19-month term tenancy to end on July 31, 2019. Rent was set at \$1700.00 per month payable on the first day of each month. The parties agreed that the tenancy ends at the end of the fixed term and the tenants must move out of the house on or before the last day of the tenancy. A security deposit was collected but returned at the end of the tenancy with no issues reported by either side.

The tenant LM (“tenant”) provided the following testimony. In October 2018 contractors came to look at the rental unit at the landlord’s request. On that date, the tenant sent a text to the landlord asking where they were at with renovations and the possibility of the landlords moving in. The landlord responded, *‘yes, we will be renovating and building a garage but no rush – you have a lease until July next year and we are not ready to change it up unless the perfect place for you and family shows up sooner.’* A copy of the text exchange and subsequent exchanges were provided as evidence.

The tenant testified that despite the landlord’s reassurance, she felt ‘spooked’ that the landlords were planning on ending the tenancy early so she started looking for another place to live. On January 5, 2019, the tenant sent a text message to the landlord saying they have a serious lead on a new home and that she would let the landlord know as soon as they knew for sure. On January 9th, the tenant confirmed they got the house and that they would be moving out on February 1st. The landlord responded with *‘so I assume you are giving one month notice this month. Congrats on the new home.’*

On February 3rd, the parties exchanged text messages regarding a final inspection and the exchange of the security deposit. In this exchange, the landlord writes, *‘...As we have mutually agreed to end tenancy before the agreement expired all I need is statement from you that you have received your damage deposit and agree that the accounting is correct. I will e-transfer the amount this aft...’*

In March, the tenants discovered the landlord had put the house on the market rather than move in, as they were led to believe. The tenants seek compensation for the landlord’s bad faith in ending the tenancy because the landlords sold the property for more money than they purchased it for. The tenants deny the landlords are entitled to

compensation for ending the fixed term early because the rental market in their community is tight as shown by vacancy statistics provided as evidence by the tenants.

The landlord SB ("landlord") provided the following testimony. During the time of the tenancy, the landlords were living on a boat. They had planned on doing improvement renovations on the house at the conclusion of the tenancy in July but discovered that the cost to do the improvements was too expensive. Instead of doing the renovations, the landlords chose to sell the property.

The landlords never intended on ending the tenancy early and they were taken by surprise on January 9th when the tenants advised them they were moving out in 20 days on February 1st. They would have preferred the tenants stay until the end of the fixed term until July 31st. The landlords never served the tenants with a Two Month Notice to End Tenancy for Landlord's Use and therefore the tenants are not entitled to any compensation. Had the parties signed a Mutual Agreement to End Tenancy, neither of the parties would not be eligible for compensation. If the tenants had approached them with the form to sign when they found a new place to live, the landlords would have agreed to sign it. Instead, the tenants ended the tenancy on January 9th, breaking the fixed term tenancy. The landlords seek compensation for the months of February, March and April representing the 3 months the rental unit remained vacant before the new owners took possession on May 3rd.

Analysis – tenant's claim for compensation

Section 51 of the Act states a tenant who is served with a Notice to End Tenancy for Landlord's Use ("notice") pursuant to section 49 is entitled to compensation in an amount equivalent to 12 times the monthly rent if 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 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.

There is no evidence before me that the landlords ended the tenancy, nor that the landlords had even contemplated ending the tenancy before the agreed to end date in the tenancy agreement. I find the landlord's reassurance in the October text message clearly shows the tenants were welcome to remain in the home until the end of July. In this case however, the tenants were 'spooked' that the landlord might end the tenancy early, then started looking for a new place to live. It was the tenants, not the landlords who ended the fixed term tenancy early.

Although the landlords eventually sold the home after the tenants moved out, the tenants have no claim for compensation against the landlords because the **tenants were never served with a notice pursuant to section 49**. Whether the landlords showed good faith in including a clause to end the tenancy at the end of the fixed term is not relevant in this case because the landlord never ended the tenancy. By the text

message sent on January 9th, I find the tenants ended the tenancy, not the landlords. The tenants are not entitled to 12 months compensation pursuant to section 51 as they were not served with a notice to end tenancy in accordance with section 49. The tenants' claim is dismissed.

Analysis – landlord's claim

Section 62(2) of the Act allows the director (arbitrator) the authority to make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

The tenants terminated the tenancy on January 9th by text message with a response from the landlord implying it was received on that date. When they were provided with the text message, the landlords clearly indicated that they felt the tenancy ended by mutual agreement. I refer to the text message dated February 3rd, two days after the tenancy ended where the landlord writes, '*...As we have mutually agreed to end tenancy before the agreement expired all I need is statement from you that you have received your damage deposit and agree that the accounting is correct. I will e-transfer the amount this aft...*' Further, the landlord testified that despite knowing they would suffer detrimental consequences for not being able to pursue compensation, they would have signed a mutual agreement to end tenancy if the tenants had provided them with one to sign. For these reasons, pursuant to section 62(2), I find the landlords and the tenants mutually agreed to end the tenancy with an effective date of February 1, 2019.

Both the parties acknowledged what would happen if the tenancy ended by mutual agreement: that there would be no further obligations between the parties and that the parties forego any right to compensation had either party been served with a notice to end tenancy. I find that the landlords are not entitled to compensation for damages or loss and dismiss their application.

Conclusion

The tenants' claim is dismissed.

The landlords' claim is dismissed.

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 06, 2019

Residential Tenancy Branch