



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant SK (the tenant) confirmed that they were handed the 1Month Notice by the landlord on August 30, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The tenant gave sworn testimony supported by written evidence that they sent the landlord a copy of their amended dispute resolution hearing package to the mailing address the landlord provided on their 1 Month Notice by registered mail on September 13, 2019. The tenant provided undisputed sworn testimony and written evidence that this material was returned to the tenants by Canada Post with the notation that the landlord had moved. The landlord's advocate (the advocate) confirmed that the landlord did receive a copy of the tenants' dispute resolution hearing package and most of the tenants' written evidence by email, save for a copy of the Monetary Order Worksheet. Based on this evidence and in accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the dispute resolution hearing package and written evidence. The landlord did not provide any written evidence for this hearing.

Preliminary Matters

At the commencement of the hearing, the parties confirmed that the tenants vacated the rental unit on September 15, 2019. As such, the tenants withdrew their application to cancel the 1 Month Notice. The tenants' application to cancel the landlord's 1 Month Notice is hereby withdrawn.

The advocate advised that the landlord has applied for authorization to retain the tenants' security and pet damage deposits (the deposits), and a hearing before an Arbitrator appointed pursuant to the *Act* has been set for March 2020 (see above).

The tenants' original application of September 8, 2019 sought the cancellation of the 1 Month Notice, recovery of their filing and a monetary award of \$2,000.00 for the following:

Extra expenses to the invalid notice. For moving costs and an extra 2 weeks of rent for the place we are moving to.

On September 13, 2019, the tenants amended their application, increasing the amount of their requested monetary award to \$13,635.00. Their amended application included the following items listed on the attached Monetary Order Worksheet:

Item	Amount
New Landlord - 6 Month's Rent	\$10,680.00
New Landlord - Damage Deposit	890.00
New Landlord - Half Month's Rent	890.00
Moving Costs	1,075.00
Fuel Costs	100.00
Total of Above Items	\$13,635.00

The Residential Tenancy Branch's Rules of Procedure establish how amendments can be made to existing applications. Rule 2.2 establishes that a claim is limited to what is stated in the application. Rule 2.3 states that "claims made in the application must be related to each other" and that "arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply." While amendments to existing applications are permitted, Rule 4.1 establishes that "unrelated claims contained in an application may be dismissed with or without leave to reapply."

While the tenants' amendment came only five days after their initial application was made, the changes they have made in that application and in the explanation they provided through their Monetary Order Worksheet clearly indicate issues that were not present in their original application. For example, their request for a return of their deposits reflects their apparent decision by September 13, 2019 to vacate the rental unit pursuant to the landlord's Notice to End Tenancy. A hearing has already been scheduled to consider the landlord's application to retain some of these funds, as the landlord maintains that damage arose during the course of

this tenancy. I also note that when the tenants amended their application, the landlord was under no legal obligation to return their deposits.

The tenants also added that they are seeking a monetary award in excess of \$11,000.00, which in their Monetary Order Worksheet referenced their new landlord, which had not been referenced in their original application. At the hearing, the tenant clarified that this amount was actually sought from the Respondent, even though their reference to the "New Landlord" introduced yet another confusing element to their amended application.

Under these circumstances, I find that the tenants' request for an increased monetary award from \$2,000.00 to \$13,625.00 represents a significantly changed set of events and focus to their original application. As such, I advised the parties that I was exercising my discretion pursuant to Rule 4.1 of the Rules of Procedure to consider only those elements contained within the tenants' original application.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or other money owed by the landlord arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On June 9, 2019, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that was to cover the period from July 1, 2019 until June 30, 2020. Monthly rent was set at \$2,074.00, payable in advance on the first of each month, which included utilities. The tenants paid a security deposit of \$1,037.00 and a \$200.00 pet damage deposit for this tenancy.

The landlord's 1 Month Notice entered into written evidence by the tenants sought an end to this tenancy by September 30, 2019, for the following reason:

Rental unit must be vacated to comply with a government order.

Since the tenants did not believe that the landlord had been issued a government order to have their rental unit vacated, and that the landlord was actually seeking an end to this tenancy to undertake renovations, they applied to cancel the 1 Month Notice.

After discussion with the landlord and representatives of the Residential Tenancy Branch (RTB), the tenants decided to vacate the rental unit. The tenant testified that they were advised by the RTB representative that they could be entitled to a monetary award if the landlord ended their tenancy without adequate reason to do so.

The tenants explained that they understood that the landlord might require them to leave on three day's notice if the municipality ordered them to comply with municipal bylaws regarding the number of unauthorized residential units within this building. They said that they had anticipated staying in the rental unit for the fixed term of their tenancy and that the landlord's failure to disclose to them that this was an unauthorized unit led to their premature eviction from these premises. They said that their move caused them considerable stress, led to moving costs that they had not anticipated, and caused them to miss work attending to these matters.

The advocate testified that a second Notice to End Tenancy was issued to the tenants on September 5, 2019, for non-payment of rent for the month of September. The advocate gave undisputed sworn testimony that this 10 Day Notice to End Tenancy for Unpaid Rent was automatically cancelled when the tenants paid their September 2019 rent in full within five days of receiving that Notice. The advocate maintained that the tenants did not inform the landlord that they had left the rental unit until at least a week after they had moved.

The parties agreed that the only Notice to End Tenancy that remained in place after the tenants' payment of their September 2019 rent was the 1 Month Notice that the tenants applied to cancel, and which was to have been considered at this hearing. The parties agreed that the landlord did not issue them a Notice to End Tenancy for Landlord's Use of Property.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord contravened their Agreement or the *Act*, and that the tenants suffered losses arising out of that contravention.

Although I asked the tenants a number of times during this hearing to identify the provision under the *Act* that the tenants believed the landlord contravened, they were unable to do so. Rather, they maintained that they had a one-year fixed term Agreement, and that the landlord's failure to allow them to remain in this tenancy for the full one-year qualified them for a monetary award. They asserted that the reason cited in the landlord's 1 Month Notice was invalid and that their being "forced" to move due to the landlord's pending renovations to bring the rental unit into compliance with municipal bylaws entitled them to the monetary award requested.

In considering this matter, I note that whether or not the tenants could have successfully challenged the 1 Month Notice and remained in the rental unit has no bearing on whether they

are entitled to a monetary award. The reality is that they vacated the rental unit earlier than the effective date of the 1 Month Notice, and did so without having received any new Notice to End Tenancy for Landlord's Use of Property, which would have included provisions enabling them to obtain compensation. Since they left without the landlord having to demonstrate the landlord's entitlement to end this tenancy for cause and without the landlord being issued an Order of Possession, the tenants' behaviour in essence accepted that the reasons cited in the 1 Month Notice constituted sufficient grounds to end this tenancy.

As reviewed with the parties at the hearing, signing a one-year fixed term tenancy agreement does not prevent a landlord from ending a tenancy for unpaid rent or for cause. I accept that the tenants may have misunderstood their rights to stay in the rental unit until a decision had been issued by an Arbitrator to enable the landlord to end this tenancy. They may also very well have misinterpreted the information they received from the Residential Tenancy Branch with respect to this matter. However, this does not alter the fact that there is no provision in the *Act* that enables tenants who vacate a rental unit after having received a 1 Month Notice to obtain monetary compensation from their landlord.

I find that there is no legislative basis whereby the tenants are entitled to a monetary award for abiding by the terms of a landlord's 1 Month Notice, after having moved out of the rental unit before the end of their fixed term tenancy agreement. Based on a balance of probabilities I dismiss the tenants' application for a monetary award without leave to reapply.

Since there is no legislative basis whereby the tenants could obtain any type of monetary award for either the amount they have claimed in their original application or the amount they added in their amended application, I dismiss the tenants' amended application for a monetary award for losses arising out of this tenancy without leave to reapply. I take this action pursuant to Rules 2.3 and 4.1 of the Rules of Procedure, which allow me to dismiss amendments without leave to reapply.

As there is already a March 2020 hearing scheduled to hear the landlord's application to retain a portion of the deposits, an arbitrator appointed pursuant to the *Act* will consider that portion of the tenants' amended application that pertains to their deposits.

Since the tenants have been unsuccessful in their application, they bear the costs of their filing fee.

Conclusion

I dismiss the tenants' application for a monetary award for losses and other monies owed arising out of this tenancy and their application to recover their filing fee without leave to reapply.

The tenants' application to cancel the 1 Month Notice is withdrawn.

Consideration of who is entitled to the deposits for this tenancy will be considered at the hearing scheduled for March 2020 referred to above.

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: November 18, 2019

Residential Tenancy Branch