



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, RP, LRE, FFT

Introduction

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

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant HB" did not attend this hearing, which lasted approximately 28 minutes. The two landlords, male landlord ("landlord") and "female landlord," and tenant AB ("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. The tenant confirmed that he had permission to represent tenant HB, as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and notice of hearing.

The landlord said that he did not receive the tenants' evidence. The tenant said that he sent his USB evidence to the landlords on December 5, 2019 by registered mail. The

tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the Act, I find that the landlords were deemed served with the tenants' evidence on December 10, 2019. I notified both parties that I could not consider the tenants' evidence at the hearing or in my decision because the landlords did not receive it and it was deemed received late, less than 14 days before this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

The tenant said that he did not receive the landlords' evidence package. The landlord said that he did not serve it to the tenant because he did not have a forwarding address. He stated that the tenants already had the landlords' evidence from before they filed their application. I notified both parties that I could not consider the landlords' evidence at the hearing or in my decision because it was not served to the tenants after they filed their application, so they did not have notice of which documents the landlords were intending to rely on at this hearing.

At the outset of the hearing, the tenant confirmed that the tenants had vacated the rental unit and the tenants were only seeking monetary orders. Accordingly, the remainder of the tenants' application is dismissed without leave to reapply/.

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 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.

Both parties agreed to the following facts. This tenancy began on July 3, 2019. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord said that the tenants moved out on November 17, 2019, while the tenant claimed that it was November 16, 2019.

The tenants seek a monetary order of \$1,161.00 plus the \$100.00 application filing fee. The tenants originally applied for \$1,210.00 but reduced their claim at the hearing. The tenants seek \$336.00 for having to purchase “four to five months” of internet. The tenant claimed that internet was supposed to be included in the tenancy agreement, but it was “poor quality.” The tenants seek \$90.00 because they claim that the landlords shut off their electricity for two days. The tenant claimed that he texted the landlords, he could not use his appliances, and he could not cook vegetarian food. The tenants seek \$735.00 for moving expenses. The tenant claimed that the landlords gave the tenants short notice to move, the landlords called the police and it scared the tenants’ kids, and the tenants have to pay gas for people to drive their daughter to school, which is now further away. He explained that the landlords gave the tenants a 1 Month Notice because the tenants complained about rats in the hood of their car and the landlords refused to deal with the garbage and the City.

The landlords dispute the tenants’ entire application. The landlord claimed that the tenant is lying, the tenants left their lights and oven on all the time, and the tenants failed to pay rent, for which they got a notice to end tenancy. The landlord questioned why the tenants moved out if they disputed the 1 Month Notice in this application, since the landlords were waiting for this hearing to determine the outcome.

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 applicants 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 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 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 tenant’s entire application of \$1,161.00 without leave to reapply.

I find that the tenants voluntarily vacated the rental unit. I find that the tenants provided insufficient evidence that they were forced to move. The tenants filed an RTB application disputing the landlords' 1 Month Notice, but instead of waiting for this hearing, chose to move out. Although the tenants may have incurred moving costs, they would have in any event, when leaving the rental unit. The fact that the tenants chose to leave when they did, was up to them. Therefore, the moving expenses of \$735.00 are the tenants' own costs to bear.

I find that the tenants failed to provide sufficient evidence that they suffered losses from losing electricity for two days. The tenant did not explain how he came up with \$90.00. I find that the tenants failed to show that they lost their ability to cook or use appliances, had to eat out, or had to incur costs, due to this issue. The landlords disputed the tenants' claim.

I find that the tenants failed to provide sufficient evidence that they incurred costs for internet of \$336.00. The tenant did not even know how many months he paid for internet, claiming that it was "four to five months." The tenant did not explain how he came up with \$336.00 for these costs or provide a breakdown at the hearing. The landlords disputed the tenants' claim.

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

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: December 20, 2019

Residential Tenancy Branch