



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, OLC

Introduction

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

- cancellation of the landlords' 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated October 31, 2019 ("4 Month Notice"), pursuant to section 49(6); and
- 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.

"Landlord CF" did not attend this hearing, which lasted approximately 34 minutes. The two tenants and landlord RF ("landlord") 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 landlord confirmed that he had permission to represent landlord CF at this hearing (collectively "landlords"). This hearing lasted approximately 34 minutes.

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

The tenants were in receipt of the landlords' 4 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 4 Month Notice.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 31, 2020, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenants are vacating pursuant to the landlords' 4 Month Notice, dated October 31, 2019;
3. The landlords agreed that the tenants are entitled to one-month free rent compensation, pursuant to section 51 of the *Act* and the landlords' 4 Month Notice, and that the tenants are not required to pay any rent to the landlords for the month of March 2020;
4. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application at this hearing, except for their monetary claim.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties understood and agreed to the above terms, free of any duress or coercion. Both parties agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The parties were unable to settle the tenant's application for a monetary order and asked that I make a decision about it. Below are my findings.

Issue to be Decided

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

Background and Evidence

The tenants seek a monetary order of \$5,500.00 from the landlords. They claimed that they overpaid rent in the amount of \$250.00 per month for a period of 22 months since February 2018. They stated that the landlords verbally charged them an extra \$250.00 per month for utilities, which they never had to pay for before. They provided a rent receipt for \$1,000.00 from March 2017. They said that their rent was supposed to be \$1,000.00 but it was increased to \$1,250.00 per month. They provided a Notice of Rent Increase, dated July 31, 2019 ("NRI"), from the landlords, indicating that their rent was \$1,250.00 and would be increased by \$31.25 per month, to a total of \$1,281.25, effective on November 1, 2019. They explained that they did not provide proof of their rent payments of \$1,250.00 but the landlords' NRI showed the rent amount.

The landlords dispute the tenants' application. The landlord stated that the tenants never paid more than \$1,000.00 per month in rent, as they did not pay \$1,250.00 or \$1,281.25. He maintained that he only issued the NRI in order to sell the building, but the tenants never actually paid a higher rent. He claimed that he knew if he applied at the RTB for the higher rent, it would not be approved, so he did not try. He said that he gave rent receipts to the tenants for \$1,000.00 per month. The tenants denied getting any rent receipts from the landlords, claiming that they had to write their own.

Analysis of Tenants' Monetary Application

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. 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 tenants' application for \$5,500.00, without leave to reapply. I find that the tenants failed the above test. The landlords disputed the tenants' claims.

I find that the tenants failed to show that they were paying rent of \$1,250.00 or \$1,281.25 per month. They did not provide any bank records to show cash withdrawals, as they claimed they were paying cash for rent. They did not provide the photographs

of the cash envelopes they said they submitted to the landlords and had in front of them during this hearing. They only showed that they were paying \$1,000.00 per month in rent, as per the rent receipt they provided from March 2017. They did not provide any rent receipts for higher amounts, despite claiming that they wrote their own receipts. The landlord confirmed that the tenants only paid \$1,000.00 per month in rent. I do not find that the NRI shows that the tenants were paying \$1,250.00 in rent, just because it indicated that amount as the rent, since the landlord claimed that the NRI was used to help him sell the building, not because the tenants had paid that amount. The tenants did not dispute a rent increase or file an application at the RTB, until the landlords served them with a 4 Month Notice to end their tenancy. I find that even if the tenants paid a higher amount of rent, they agreed to do so, for a period of almost two years.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on March 31, 2020. The landlords are provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on March 31, 2020. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of 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: January 17, 2020

Residential Tenancy Branch