



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNSD, FFT, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 5, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order that the Landlords return the security deposit;
- an order that the Landlord return personal property;
- an order granting the return of the filing fee.

The Tenants and the Landlord M.F. attended the hearing at the appointed date and time.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 51 and 67 of the *Act*?

2. Are the Tenants entitled to the return of their security deposit, pursuant to Section 38 and 67 of the *Act*?
3. Are the Tenants entitled to the return of their personal property, pursuant to Section 65 of the *Act*?
4. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 1, 2016. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,833.42 which was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$850.00. The Tenancy ended on April 30, 2019. The Tenants submitted a copy of the tenancy agreement in support.

The Tenants stated that they are seeking double the amount of the security and pet damage deposits returned to them in the amount of \$1,700.00. The Tenants stated they provided the Landlord with their forwarding address on April 20, 2019 before the tenancy ended on April 30, 2019. The parties agreed that the Landlords submitted an Application to retain the Tenants' deposits, however, at the time of that hearing on February 22, 2020, the Landlords withdrew their Application. The Arbitrator in the previous hearing ordered that the Landlords return the Tenants' security and pet damage deposits in the amount of \$1,700.00, which was received by the Tenants on September 4, 2019.

The Tenants stated that the Landlords extinguished their right to retaining the Tenants' deposits in the first place, by not completing a move in and move out condition inspection report. The Tenants stated that they should be entitled to double the amount of their deposits, which is why they are seeking a further \$1,700.00 from the Landlords.

The Tenants are claiming for monetary compensation in the amount of \$22,001.04 which is equivalent to twelve months of rent. The Tenants stated that they received a Two Month Notice from the Landlord on February 9, 2019 stating that the rental unit will be occupied by the landlord or the landlord's close family member. The Two Month Notice dated February 4, 2019 and has an effective vacancy date of May 31, 2019. The Tenants submitted a copy of the Two Month Notice in support.

The Landlord testified that he served the Two Month Notice to the Tenants as he and his family intended on moving into the rental property given that the Landlord's wife had some health problems and they wanted to be closer to friends and family for support.

The Tenants stated that they complied with the Two Month Notice and vacated the rental property on April 30, 2019. The Tenants stated that the Landlords immediately commenced an extensive renovation of the rental property and did not move into the rental property until November 9, 2019. As such, the Tenants feel as though the Landlords did not follow through on the intended purpose of the notice within a reasonable period of time.

The Landlord stated that he wanted to add another bedroom to the rental property for his daughter. As such, the Landlords started the renovation before the Municipality served them a stop work order as they did not have the required permits in place. The Landlord stated that it took some time to secure the necessary permits required to complete the renovations. The Landlords provided a copy of the plumbing, framing and insulation permits in support. The Landlord stated that it also took time to secure trades persons to complete the renovation prior to the Landlord and his family moving into the rental property on November 9, 2019.

The Landlord stated that he moved some of his items into the rental property on August 17, 2019 and then the remaining portion on November 9, 2019 at which point the Landlord and his family occupied the home as renovations were complete.

The Tenants are also seeking compensation in the amount of \$160.00 to replace four chairs that the Landlord disposed of. The Tenants stated that after moving out of the rental unit, the Tenants had arranged to sell the chairs to a buyer who was meant to pick them up outside of the rental property. The Tenants stated that they never received the money from the buyer, which prompted the Tenants to go see if the chairs were still there. The Tenants stated that they returned to the rental property on May 12, 2019 to find their chairs at the bottom of a pile of construction debris.

The Landlord responded by stating that the Tenants had left a futon and four chairs outside following the end of their tenancy. The Landlord stated that the Tenants did not communicate to him what their plan was for the items. After they had been left outside for twelve days, the Landlord stated that he thought the items had been abandoned, therefore, he disposed of them.

If successful, the Tenants are also seeking the return of their filing fee paid to make the Application.

Analysis

The Tenants are claiming for \$1,700.00 in relation to the Landlord extinguishing his right to retaining the Tenants' security deposit. During the hearing, the parties testified and agreed that they took part in a previous hearing in which the Landlord withdrew his application to retain the Tenants' security deposit.

In the decision dated February 22, 2020, the Arbitrator ordered that the Landlord return the Tenants' security deposit in the amount of \$1,700.00. The Tenants were provided with a monetary order in the amount of \$1,700.00. I accept that the Landlords have complied with the monetary order and return the deposits to the Tenants in full which was received by the Tenants on September 4, 2019.

I find that the right to the security deposit has already been determined; therefore, this matter is *res judicata*, meaning that the matter has already been adjudicated upon and therefore, cannot be re-heard again.

As such, I deny reconsideration of this matter during this hearing and subsequently dismiss the Tenants' claim for the return of double their security deposit without leave to reapply.

The Tenants are claiming \$160.00 in relation to four chairs that had been disposed of by the Landlords following the end of the tenancy. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find that the Tenants failed to mitigate their loss by leaving the chairs outside of the rental unit for twelve days beyond the end of their tenancy without communicating to the Landlords' what their intent was with the chairs. I find that the Tenants should have removed all their possession from the rental unit at the end of the tenancy. As such, I dismiss the Tenants' claim for compensation in the amount of \$160.00 for four chairs without leave to reapply.

The Tenants are claiming compensation in the amount of \$22,001.04 which represents twelve months of rent as the Landlord did not follow through on the intended purpose of the Two Month Notice within a reasonable period of time.

Section 51(2) of the *Act* states;

in addition to the amount payable under subsection one, if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

The Residential Tenancy Policy Guideline 50 (the "Policy Guideline") further explains;

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. **A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.**

I accept that the parties agreed that the Landlord served the Tenants with a Two Month Notice which was received by the Tenants on February 9, 2019. The parties agreed that the Landlord indicated that the Two Month Notice was for the Landlord and his family members to occupy the rental property following the effective vacancy date of May 31, 2019.

In this case, I accept that neither the Landlords nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of May 31, 2019 as indicated on the Two Month Notice. Instead, as stated by the Landlord, they performed renovation extensive enough to require permits. I find that the Landlords did not follow through on the intended purpose of the Notice until November 9, 2019 which is over 6 months after gaining vacant possession of the rental property. I find that this far exceeds what could be considered as a reasonable period of time to follow through on the intended purpose of the Two Month Notice.

Based on the above I find that the Tenants are entitled to \$22,001.04 in compensation from the Landlords, pursuant to section 51(2) of the *Act*. As the Tenants were partially successful in their application, I also find that they are entitled to the recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result of the above and

pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$22,101.04.

Conclusion

The Landlords have not taken steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$22,101.04.

The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 26, 2020

Residential Tenancy Branch