



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants and the landlords attended. The landlords acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find that the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*. The tenants acknowledged receipt of the landlords' evidentiary materials.

Issue(s) to be Decided

Are the tenants entitled to the following?

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began in February 2018 and continued when the building was sold to the current landlords on November 1, 2018. The unit is one of two apartments on one side. The tenants paid rent of \$1,652.00 due on the first of the month. The tenants vacated on July 31, 2019 and their security deposit was returned to them.

The landlords testified that the municipality contacted them in January 31, 2019 and requested an inspection of two apartments in the building, one being the unit occupied by the tenants, and both allegedly with non-compliance issues. The landlords testified they had no knowledge of any such issues and submitted disclosure documents in support of this assertion from the property purchase.

The landlords testified that they received a signed letter from the Building Inspector of the City dated May 30, 2019 which stated as follows:

You are receiving this letter because there is an outstanding issue related to a building or structure on your property. The following actions must be taken to voice further enforcement within two weeks of the date of this letter.

- *Apply for a Building Permit or*
- *Remove unpermitted construction*
- *Book Site inspection at [tel #]*
- *Contact the Building/Planning Department for compliance details*

The issue is related to:

- *Unpermitted Construction*
- *Unpermitted Occupancy*
- *Unpermitted Use*

No action by the date specified will result in ticketing and or legal action.

[signed by Building Inspector]

The landlords conducted inquiries of the City and learned that two of the apartments, one being the tenants' unit, required work to bring them to "legal suite" status. The

landlords were afraid of the threatened legal action and set about to bring the suites into compliance.

The parties met on June 8, 2019 and discussed the situation. The landlords asked the tenants to stay even though workers would be doing whatever was necessary to bring the unit into compliance; the coming and going of workers would be inconvenient for the tenants.

The landlords testified that “as a back up”, they gave the tenants a One Month Notice, the cause being, “Rental unit/site must be vacated to comply with a government order”. The effective vacancy date was July 31, 2019.

The landlords explained that they issued the Notice because they were afraid of ticketing or legal action by the City if they did not quickly move forward with the work. The tenants acknowledged receipt of the Notice, a copy of which was submitted as evidence. The tenants did not apply to dispute the Notice.

The landlords both gave testimony that they “begged” the tenants to stay. The tenants acknowledged the landlords’ persistent requests that they remain in the unit. The landlords claimed they had an excellent, trusting relationship with the tenants.

However, the tenants stated that they had a “strained” relationship with the landlords. They said that the landlords were not clear about the extent of the work to be done. The tenants claimed their queries about the nature of the work and time involved went unanswered. In reply, the female landlord stated that any delay was not deliberate; she was dealing with an ill parent and the stress as a first-time building owner in negotiating with the City.

The tenants expressed to the landlords their determination to leave as they found the situation “not stable enough” and the tenants did not trust that the landlords would get the work done in a timely fashion. On July 5, 2019, the parties signed a Mutual Agreement to End Tenancy effective July 31, 2019 in the RTB form, a copy of which was submitted as evidence.

The landlords explained to the tenants that they had to rent the unit to pay their expenses. To the knowledge and consent of the tenants, the landlords advertised the unit for rent in July 2019 and the tenants cooperated with showing the unit. The landlords located suitable new occupants who moved in a few days after the tenants moved out, on August 3, 2019 at an increased rental of \$2,000.00 a month.

The landlords testified that the work was non-intrusive and that the occupants of the other affected apartment, as well as the new occupants of the unit, elected to stay throughout the work period which ended August 20, 2019.

The tenants subsequently filed a Freedom of Information Request with the City and learned that the only directive received by the landlords was the above-mentioned letter of May 30, 2019. The tenants claimed this is not an “order” to which reference is made in the Notice; hence, the Notice was “illegal”. The tenants filed substantial correspondence surrounding the FOI request and the responses.

The tenants stated that getting a Notice to vacate was extremely stressful, required them to take time off work, some of which was unpaid, and upset their family which included young children. They claimed a monetary order of \$348.00 monthly for 12 months, being the difference between the rent they paid for the unit, and the increased rate from the new occupants.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. The hearing last 87 minutes and both parties submitted substantial documentary evidence, including texts, emails, letters and various other documents. Before the close of the hearing, I asked each of the parties to direct my attention to those documents which they considered particularly supportive of their position.

The parties agreed the tenants vacated the unit on July 31, 2019. Section 47 provides that upon receipt of a One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants did not apply to dispute the One Month Notice.

The tenants claim is for compensation under section 67.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The other party violated the *Act*, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. The quantum of the loss;
4. The applicant did whatever was reasonable to minimize their damage or loss

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the tenants to prove they are entitled a claim for a monetary award.

The tenants claim that the landlords did not have cause to issue the Notice. They claim that the landlords did not have the “order” from the city referenced as the cause in the Notice as follows, “Rental unit/site must be vacated to comply with a government order” (emphasis added). As a result, the Notice was “illegal” and the landlords should not be entitled to benefit financially by increased rent.

However, I find that the landlords did receive a letter from the City dated May 30, 2019, signed by the Building Inspector, referenced above, as acknowledged by the parties. This letter clearly states that the landlords were to carry out certain repairs to bring the unit into compliance, failing which fines or legal proceedings may follow.

I find that this letter is an “order” as contemplated in the Notice. I find it is a clear direction from the City to the landlords to carry out certain tasks or face the consequences. I therefore find that the Notice was properly issued, and the cause proven.

I find that the landlords were faced with a direction from the City to bring the unit into compliance and set out to do so as required. They attempted to accommodate the tenants. The Notice was properly issued. The tenants did not dispute the Notice. As acknowledged by the parties, the landlords “begged” the tenants to stay. As the tenants chose to leave, the landlord advertised for new occupants and negotiated a new lease with them. That this rental is higher than the rent paid by the tenants may seem unfair to the tenants; however, this does not lead to the conclusion that the landlords acted unlawfully.

I have carefully weighed the testimony and documentary evidence of both parties. The parties agreed on most key facts. However, the tenants believed they were tricked or pushed into moving and incurring the expense and chaos that ensued.

During the hearing, the landlords expressed to the tenants that they were sorry the tenants did not stay in the unit, and the landlords wished the tenants well. I found the landlords to be credible and sincere. I therefore gave greater weight to the landlords' testimony which was supported by significant and compelling documentary evidence.

I find the landlords did not violate the *Act*, regulations or tenancy agreement with respect to any aspect of the Notice or the tenants' decision to vacate the unit. I find the landlords did not exert any pressure whatsoever on the tenants, except to "beg" them to stay. The Mutual Agreement to End Tenancy signed by the parties provides documentary support for the assertion that the tenants left of their own accord.

Considering the testimony, the evidence, and the *Act*, I therefore find the tenants have not met the burden of proof on a balance of probabilities with respect to the first step above, that is, that the landlords *violated the Act, regulations or tenancy agreement*.

I therefore dismiss the tenants' claims without leave to reapply.

Conclusion

I dismiss the tenants' claims 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: April 03, 2020

Residential Tenancy Branch