



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of \$6,100.00 for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord SF (landlord) and tenants FH and SA (tenants) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However; only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that they had received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. As a result, I find the parties were sufficiently served under the Act.

Preliminary and Procedural Matters

On May 29, 2020, after 60 minutes of testimony and review of documentary evidence, the parties were advised that I would be adjourning this matter. I have reconsidered since May 29, 2020 and find that an adjournment is no longer necessary as the only party to require additional time was the tenants, who did not have enough time to fully complete their submissions. However; as I will describe later in this decision, I find that I have sufficient evidence to render a decision based on the evidence presented as the

landlords were given the time to complete their submissions. Therefore, I find there is no need to adjourn this matter and have issued this final decision as a result.

In addition, the parties confirmed their email address at the outset of the hearing and were advised that the decision would be emailed to the parties.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on June 1, 2018 and was scheduled to revert to a month to month tenancy after May 31, 2019. The landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and the landlord stated that they cancelled the 2 Month Notice; however, the tenants testified that they had accepted the 2 Month Notice and vacated the rental unit based on the 2 Month Notice. During the hearing, the landlord mentioned a previous decision, the file number of which as been included on the style of cause for ease of reference. The landlord stated that this application was based on the results of that previous decision. In that previous decision dated December 31, 2019 (previous decision), an arbitrator at a Review Hearing wrote the following in part on page six of that decision:

Compensation Claim for 12 Months' Rent

The Tenants acknowledged that he called the RTB to ask if the Landlord can cancel a Two Month Notice. This raises questions in my mind as to why the Tenant would have done this, if he had not received the Landlords' notice cancelling the Two Month Notice. I also question why the Tenants did not raise this as an issue with the original arbitrator in the first hearing on September 27, 2019, if they had been told by the RTB that a Landlord cannot cancel a Two Month Notice.

When I consider all the evidence before me, overall, I find that the Two Month Notice was, in fact, cancelled by the Landlords, which I find they were at liberty to do.

[Emphasis added]

The 2 Month Notice was dated March 31, 2019 and had an effective vacancy date of May 31, 2019. The landlord stated that due to the landlords making the decision to cancel the 2 Month Notice and based on the previous decision, the landlords are now seeking unpaid May 2019 rent of \$3,000.00 and loss of June 2019 rent of \$3,000.00, plus the filing fee for a total of \$6,100.00.

The landlord stated that originally, May 2019 rent was not charged to the tenants as they were advised by the RTB that when a 2 Month Notice was issued, the last month of rent was due to the tenants as compensation. As a result, the landlord confirmed the cheque was ripped in half and eventually returned to the tenants. The landlord testified that they are seeking loss of June 2019 rent as the were unable to re-rent the rental unit and eventually made the decision in July 2019 not to re-rent the rental unit. The landlord also confirmed that the rental property had been up for sale between January 2019 and January 2020, but that they did not have a "For Sale" sign on the property.

The tenants stated that the landlords were not authorized to cancel a 2 Month Notice and that they feel that this claim is without merit. The tenants confirmed that they did not agree to the withdrawal of the 2 Month Notice and secured a new rental unit and vacated based on being served with the 2 Month Notice. The parties confirmed that the tenants did not issued their own notice to end the tenancy as the tenants' position is that they were not required to under the Act as they had the right to rely on the 2 Month Notice served upon them.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, 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 instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first address the previous decision dated December 31, 2019. Section 64(2) of the Act applies and states:

Dispute resolution proceedings generally

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

[Emphasis added]

Based on the above, I am not bound by the previous decision, which stated in part:

When I consider all the evidence before me, overall, I find that the Two Month Notice was, in fact, cancelled by the Landlords, which I find they were at liberty to do.

[Emphasis added]

I have reached this finding based on RTB Policy Guideline 11 – Amendment and Withdrawal of Notices, which applies and states:

C. WITHDRAWAL OF NOTICE TO END TENANCY

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective **date only with the consent of the landlord or tenant to whom it is given.**

[Emphasis added]

Based on the above, I find the landlords could not unilaterally withdraw or cancel the 2 Month Notice and as a result, the 2 Month Notice remained in effect, and that the tenancy ended on May 31, 2019 based on the undisputed 2 Month Notice and that this application by the landlord is without merit. Consequently, I find the landlords have failed to meet parts one, two and four of the four-part test for damages or loss described above. Therefore, I dismiss the landlords' application due to insufficient evidence, without leave to reapply. I agree with the tenants that once the landlords served the 2 Month Notice that the tenants did not dispute, the tenants legally had the right to rely on that 2 Month Notice and as a result, the tenants were not required under section 45 of the Act to issue their own notice to end tenancy, as I find the tenancy ended by way of the undisputed 2 Month Notice.

As the landlords' application has failed, I do not grant the filing fee.

Conclusion

The landlords' claim is dismissed due to insufficient evidence, without leave to reapply.

I do not grant the landlords the recovery of the cost of the filing fee as a result.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 1, 2020