



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 for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Tenants, including a copy of the Application, the Notice of Hearing, and the Tenants’ documentary evidence, and raised no concerns regarding service or the consideration of the Tenants’ documentary evidence in the hearing. No documentary evidence was submitted for my consideration or served on the Tenants by the Landlord in relation to this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential tenancy Branch Rules of Procedure (the “Rules of Procedure”), I refer only to the determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to compensation for monetary loss of other money owed?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on August 1, 2016, and became month to month after the end date of the fixed term, on July 31, 2017. The tenancy agreement also states that rent in the amount of \$1,550.00 is due on the first day of each month, and the parties confirmed in the hearing that rent was never increased.

The parties agreed that on December 12, 2020, the Tenant S.J.J. attended the Landlord's home, which is located above the rental unit, to have tea with a guest of the Landlord, resulting in an incident between the Tenant and the Landlord's guest. The parties disputed the nature of the incident, with the Tenants describing it as an attempted assault and/or sexual harassment and the Landlord describing it as a cultural and age-related misunderstanding. The parties also disputed whether anyone else was present in the Landlord's home at the time the incident occurred.

Both parties agreed that the Landlord's guest, who is a family member, was taken to the airport after the incident was reported to the Landlord's wife and that they subsequently flew back to their home country on the date of the incident. The Landlord stated that this was done out of respect for the Tenants, and not because they believe an assault or attempted assault, or any harassment occurred. The Tenants stated that they believe the guest was removed from the country to avoid any legal action against them. Although both parties agreed that the Tenant S.J.J. did not contact the police until the following day, they disputed whether this was the Tenant's choice or at the direction of the Landlord and their spouse as well as the findings of the police investigation. They also disputed the nature of an outing between the Tenant and the Landlord's spouse after the incident, with the Tenants describing it as "preventing" the tenant from returning home and the Landlord describing it as an outing to the mall to help the Tenant relax and to hear more about what happened.

The parties agreed that although attempts to reach amicable resolution so that the tenancy could continue were made, the Tenants remained unhappy and subsequently ended their tenancy at the end of December 2019, approximately 1 ½ weeks after the incident. The Tenants stated that they moved out of the rental unit with the help of friends and professional movers as they felt betrayed and unsafe by the Landlord's lack of acknowledgement of the severity of the incident and their refusal to agree that their guest would never return to the Landlord's home, which is located above the rental unit.

The Tenants stated that the incident significantly impacted their right to quiet enjoyment of the rental unit, as well as their safety, and sought the return of one month's rent in the amount of \$1,550.00 as compensation for their loss of quiet enjoyment, reimbursement of \$490.00 paid to their new landlord for December 2019 rent, and \$560.00 in moving costs. The Tenants also sought recovery of the \$100.00 filing fee.

The Landlord denied that the Tenants are entitled to the compensation sought as they do not believe that any attempted assault or harassment occurred and therefore do not agree that any loss of quiet enjoyment was suffered. The Landlord stated that as their guest was also immediately removed from their home and returned to their home country, there could not have been any ongoing safety concerns on the part of the Tenants. The Landlord also stated that they did not want the tenancy to end and that as the Tenants decided to end their tenancy without giving proper notice under the *Act*, they should not be responsible to pay for their moving costs or any portion of their rent at their new rental unit.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*], and use of common areas for reasonable and lawful purposes, free from significant interference. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

While I understand and appreciate the Tenants' feelings with regards to the incident, I am not satisfied that the incident itself, constituted a breach of any section of the *Act*. Although the Applicants are former tenants of the Landlord, the incident which forms the basis for the Tenants' monetary claims did not occur between either of the Tenants and the Landlord, and did not occur in the rental unit or on any common areas of the residential property to which the Tenants had access as part of their tenancy agreement. Although there was a landlord-tenant relationship between the parties at the time of the incident, based on the above, I find that the incident itself is best characterized as either a civil or a criminal matter.

I also am not satisfied that the Landlord's response to the incident constitutes a breach of the *Act*, such as their right to quiet enjoyment, or the tenancy agreement. Although

the Tenants may have desired a different response from the Landlord, such as assurance that the Landlord would never invite the guest back into their own home, I do not find such a response reasonable under the circumstances and given that the Landlord's home is private property, nor do I find that the *Act* required this from the Landlord. As stated above, I am not satisfied that the incident was a breach of the *Act*. Further to this, all parties agreed that the Landlord's guest left the country on the date of the incident. As a result, I find that the Landlord acted reasonably and expediently to reduce any risks to the Tenants, should they exist, as well as the Tenants' fear and discomfort, even though they disagreed about the nature and severity of the incident. As a result of the above, I therefore find that there was no breach to the Tenant's right to quiet enjoyment under section 28 of the *Act* as I do not find that either the incident itself or the Landlord's response to it represent an infringement on the Tenants' rights to reasonable privacy, an unreasonable disturbance, a breach to their right to exclusive possession of the rental unit, or their right to use of common areas for reasonable and lawful purposes, free from significant interference.

Although the Tenants stated that they had no option but to end their tenancy and move out shortly after the incident and should therefore be entitled to the reimbursement of moving costs and rent paid to their new landlord for December 2019, I do not agree. As stated above, I do not find that the incident or the Landlord's response constituted a breach of the *Act* and while I understand and appreciate the Tenants' desire to end their tenancy, ultimately I find that they chose to end the tenancy due to their personal feelings about the incident and the Landlord's handling of it, not because there was a breach of the *Act*. Further to this, the *Act* is clear about how and when tenants can end their tenancies and I agree with the Landlord that the Tenants did not give proper notice to end their tenancy under any part of section 45 of the *Act*.

The *Act* only conveys rights and obligations to landlords, tenants, and their agents, as prescribed, and does not afford protection or provide remedy in any and all circumstances where a landlord and a tenant are involved. As stated above, I am not satisfied that a breach of the *Act* occurred on the part of the Landlord and without a breach of the *Act*, I find that there can be no entitlement on the part of the Tenants to compensation under section 7, or any other section of the *Act*. As a result, I therefore dismiss the Tenants' Application in its entirety, without leave to reapply. The parties may wish to seek independent legal advice regarding any further resolution required.

Conclusion

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: July 15, 2020

Residential Tenancy Branch