



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC RR OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 17, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 16, 2020 (the "One Month Notice");
- a monetary order for money owed or compensation for damage or loss;
- an order reducing rent;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing and provided affirmed testimony.

The Tenants testified the Notice of Dispute Resolution Proceeding package and subsequent documentary evidence packages were served on the Landlords by registered mail. The Landlords acknowledged receipt. The Landlords testified the documentary evidence upon which they intended to rely was served on the Tenants by posting it to the door of the rental unit. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, 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 a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the Tenants confirmed that they moved out of the rental unit on July 16, 2020. The Tenants testified that they left a camera behind in the rental unit. The Landlords testified they discovered and disconnected the camera on August 3, 2020 but that the rental unit was otherwise vacant. As the Tenants have vacated the rental unit, I find it has not been necessary for me to consider the Tenants' request for an order cancelling the One Month Notice. This aspect of the Tenants' claim is dismissed without leave to reapply.

In addition, the Tenants' were advised during the hearing that their monetary claims for photocopying and mailing costs, and for lost wages, are not compensable under the *Act* and would not be considered. The Tenants did not dispute this determination. These aspects of the Tenants' monetary claim are dismissed without leave to reapply.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to a monetary order an order reducing rent?
3. Are the Tenants entitled to an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the month-to-month tenancy began on April 1, 2019. The Tenants testified that they moved out of the rental unit on July 16, 2020 as their relationship with the Landlords had soured. The Landlords testified that on August 3, 2020 they entered the rental unit and discovered a camera that was left in the rental unit but that the rental unit was otherwise vacant. The Tenants did not dispute this testimony. The parties agreed that rent in the amount of \$1,800.00 per month was due on the last day of each month and was applied to the following month. The parties agreed the Tenants paid a security deposit of \$900.00, which the Landlords hold.

The Tenants' monetary claim was set out in a Monetary Order Worksheet dated July 29, 2020. First, the Tenants claim \$1,800.00 for rent for the period from August 1-31, 2020. The Tenants testified they paid rent for this period by e-transfer on July 31, 2020 but that the transfer was not processed by the Landlords. Accordingly, the Tenants cancelled the transfer. The Tenants acknowledged rent for this period has not been paid and submitted they should not have to.

In reply, the Landlords acknowledged that rent has not been received for the period from August 1-31, 2020 but submitted that it should be.

Second, the Tenants claim \$150.00 as a rent reduction from July 16-31, 2020. The Tenants testified they were unsure of how to frame the request but indicated it arose because the Landlords constructed a fence in the back yard on June 15, 2020 without sufficient notice or consultation. The Tenants testified that the tenancy agreement requires them to maintain the back yard and that erecting a fence resulted in a loss of a service or amenity.

In reply, the Landlords testified the fence was built to address issues between pets owned by the Tenants and the upstairs tenants. The Landlords testified the Tenants were aware of the Landlords' intention to build a fence.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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*. 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.

With respect to the Tenants' claim for \$1,800.00 rent for the period from August 1-31, 2020, I find the Tenants have not paid rent for this period and are not entitled to the relief sought. This aspect of the claim is dismissed without leave to reapply. A determination with respect to when the tenancy ended and whether or not the Landlords are entitled to be paid rent during this period will be more appropriately made at the hearing currently scheduled on September 1, 2020. The file number of the related proceeding is included above for ease of reference.

With respect to the Tenants' claim for \$150.00 for a rent reduction due to the construction of a fence in the back yard, I find there is insufficient evidence before me to grant the relief sought. The Landlords testified and I accept that the fence was erected to address issues with dogs in the rental property, I find there is insufficient evidence before me to conclude the Landlords' breached the *Act* or the tenancy agreement or that the Tenants suffered any loss. This aspect of the Tenants' claim is dismissed without leave to reapply.

With respect to the Tenants' claim for an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement, I find there is insufficient evidence before me to grant the relief sought. Specifically, I was referred to no provision in the *Act*, regulation, and/or the tenancy agreement with which the Landlords ought to comply and no other evidence was adduced in support. I also note the Tenants have vacated the rental unit. This aspect of the Tenants' claim is dismissed without leave to reapply.

Considering the above, I order that the Tenants' claim is dismissed without leave to reapply. Accordingly, I find the Tenants are not entitled to recover the filing fee.

Conclusion

The 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: August 13, 2020

Residential Tenancy Branch