



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Both tenants and the landlord's agents, L.S. and J.V. attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The tenants were represented at the hearing by M.W.

The tenants provided undisputed testimony that they served the landlord with the tenants' Application for Dispute and evidentiary package by way of Canada Post Xpresspost for which the landlords acknowledged service. The landlords said they sent a copy of their evidentiary package via email as permitted by the Director's Order of March 31, 2020. The tenants disputed having received this email or evidentiary package but said they felt comfortable to proceed as they were aware of the contents of the evidentiary package. For these reasons, I find the tenants sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

Background and Evidence

This tenancy began On March 1, 2017 and ended on February 15, 2020. Rent was \$1,450.00 per month and a security deposit of \$800.00 was transferred to another

property that the tenants occupied following their departure from the rental unit in question.

The tenants are seeking a monetary award of \$18,400.00. They argued that the landlord failed to provide them with proper notice under the *Act* and therefore they were unable to receive compensation as contemplated by the *Act*.

The tenants acknowledged that the tenancy was ended by way of mutual agreement on December 9, 2019 when tenant J.W. signed a Mutual Agreement to End Tenancy document. M.W. argued that she was not present when J.W. signed this document, that J.W. was illiterate and therefore did not understand the contents of the document to which he was agreeing. She said the landlords were attempting to usurp compensation to which the tenants were entitled under the *Act* through their issuance of a Mutual Agreement to End Tenancy rather than a 2 Month Notice¹, as the landlords had intended to demolish the property.

The landlords acknowledged that the property in question was planned for redevelopment, however, he explained that the tenants had expressed an interest in moving to a different, nearby property and in fact had said they were “urgently” looking to relocate from the property in question. The landlords provided a conflicting version of events from that of the tenants. The landlords testified that both tenants were present when the Mutual Agreement to End Tenancy was signed, and they cited a different February move-out date from that given by the tenants.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

¹ I note the correct Notice to End Tenancy in this case would be a 4 Month Notice to End Tenancy for major construction or major renovations

The tenants argued that the landlord's true motivation for ending the tenancy was to have them vacate the rental unit so that the property could be redeveloped. The tenants argued that a 4 Month Notice to End Tenancy² should have been issued and that they were entitled to compensation because the landlords had not followed the proper steps to have them vacate the property.

Section 51 of the *Act* states, "A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement." In addition, section 51(2) notes compensation equivalent to 12 times the monthly rent if;

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that no notice to end tenancy under section 49 was ever issued to the tenants and that they are therefore not entitled to compensation under section 51 of the *Act*. Section 51 of the *Act* is very specific and is clear that any compensation stemming from a Notice to End Tenancy for Landlord's Use must arise from the issuance of a Notice given under section 49 of the *Act*.

Testimony provided by the tenants explained that they vacated the rental unit under their own volition after tenant J.W. signed a Mutual Agreement to End Tenancy. The tenants argued this was done under false pretenses and without knowing the exact nature of the document he was signing. While I accept the testimony of the tenants that there may have been some confusion as to the manner in which the tenancy ended, I find that the tenants made no efforts to challenge the Mutual Agreement to End Tenancy after it was signed and therefore accepted the decision of tenant J.W. to end the tenancy. Had they been concerned about the validity of the agreement J.W. signed with the landlords, steps could have been taken to dispute this Mutual Agreement.

Furthermore, as noted above, section 51(2) of the *Act* only provides compensation equivalent to 12 months rent in very specific circumstances that were not present in the

² See footnote 1

current circumstances. For these reasons, the tenants' application is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

The tenants' application for a monetary award is dismissed without leave to reapply. The tenants must bear the cost of their own filing fee.

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: September 23, 2020

Residential Tenancy Branch