



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On February 29, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 51 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. This Application was originally set down for a hearing on July 7, 2020 at 1:30 PM.

Both Tenants attended this original hearing; however, neither of the Landlords were able to attend and the hearing was adjourned. During this hearing, the Tenants had made requests for monetary compensation against two separate parties, the seller of the rental unit and the purchaser of the rental unit, on the same Application.

They were advised that they could not name two different Respondent parties on the same Application. As it was the Tenants’ belief that the purchaser did not use the rental unit for the stated purpose on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) after the tenancy ended, the Tenants’ claims for compensation against the purchaser were severed from this Application. The purchaser was removed as a Respondent from the style of cause on the final Decision

As the seller Respondents were not able to attend the original hearing, it was subsequently adjourned for reasons set forth in the Interim Decision dated July 8, 2020.

Both Tenants and Landlord P.S. attended the reconvened hearing on August 13, 2020 at 11:00 AM. All parties in attendance provided a solemn affirmation.

During this reconvened hearing, the Tenants advised that they served the Notice of Hearing and evidence packages to the Landlords by registered mail on March 12, 2020

and P.S. confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords have been served the Notice of Hearing and evidence packages. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

P.S. advised that she did not submit any evidence for consideration on this file because she was in a transition home and did not have access to her evidence.

In this reconvened hearing, the Tenants' claims for compensation were a result of being served the Notice. This reconvened hearing proceeded for one hour and 17-minutes, at which time I determined it was necessary to adjourn the hearing again to complete it on another date. As P.S. had not submitted any evidence to this file, and as the sale of the property was seemingly relevant to the Tenants' claims for compensation and for understanding the nature of this tenancy situation, P.S. was Ordered to upload these documents for consideration after the reconvened hearing ended, as per my instructions in my Interim Decision dated August 13, 2020.

Both Tenants and P.S. attended the second reconvened hearing on September 21, 2020 at 11:00 AM. All parties in attendance provided a solemn affirmation.

While testimony was heard with respect to the sale of the rental unit, as the issue regarding the Tenants' claims against the purchaser for not using the property for the intended purpose on the Notice was severed, it was not necessary to hear about these issues as the compensatory requirements related to the use of the property under Section 51 of the *Act* were not before me. The details related to the sale of the property and the issuance of the Notice were heard so that I could understand what had transpired during this tenancy. As such, this Decision will only address the Tenants' claims for compensation against the sellers of the rental unit (the Landlords noted in the style of cause of this Decision).

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

During the reconvened hearing on August 13, 2020, all parties agreed that the tenancy started on or around October 3, 2018 and ended on November 9, 2018 due to the Tenants accepting a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), which was served on October 23, 2018. Rent was established at \$2,000.00 per month and was due on the third day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

P.S advised that the Notice was served to the Tenants on October 23, 2018 by mail. The reason the Landlords checked off on the Notice was because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The effective date on the Notice was noted as January 2, 2019. A copy of this Notice was submitted as documentary evidence.

She stated that she was not sure if she was given a letter in writing by the purchaser to serve the Notice to the Tenants as the parties' realtors were speaking with each other and her realtor told her to serve the Notice to the Tenants. She advised that she was not sure of the exact date that the conditions of the sale were satisfied, but it was approximately near the end of December 2018. She stated that the sale was completed at the end of December 2018. She then went through her documentation and read from a Contract of Purchase and Sale where it indicated that the completion date of the sale was October 15, 2018 and that the buyer will have possession of the rental unit on October 16, 2018.

The Tenants confirmed that they received the Notice a few days after October 24, 2018 and advised that they did not receive a letter from the Landlord indicating that the purchaser requested that the Notice be served to them.

Tenant A.H. advised that they were seeking compensation in the amount of **\$535.50** for moving van expenses. She stated that they signed a month to month tenancy agreement with the Landlords on September 25, 2018 with the knowledge that the property was for sale. However, the Landlords gave them the impression that the purchaser would offer them a fixed term tenancy after the conclusion of the sale. Instead, the Notice was served to them on or around October 24, 2018 less than a few weeks after they took possession of the rental unit. In addition, they were advised by a realtor that the strata bylaws prohibited the rental unit from even being rented. It is their belief that the Landlords were negligent in renting the unit to them in the first place. Their request for compensation is based on the fact that they would not have had to make this unnecessary move had the Landlords been upfront and honest with them.

P.S. advised that the rental unit was an investment property with her mother and that when they made the decision to put it on the market, the previous tenants moved out. She stated that the Tenants were aware that the rental unit was being sold, hence the month to month tenancy agreement. She submitted that the purchaser wanted the rental unit as an investment property and wanted to retain the Tenants on a fixed term tenancy. However, after the month to month tenancy agreement was signed, new information surfaced with respect to the strata bylaws prohibiting rental of the unit. She did not know when these bylaws changed, but the realtors investigated this after the sale. She stated that the Tenants understood the risk of a month to month tenancy and that they were informed of the potential consequences of a sale. It is her opinion that the Tenants' quote for moving is high, that they made many trips with their own vehicle, and that the invoice submitted as documentary evidence for this cost could be created on a computer.

As the LL was not prepared during this reconvened hearing, and as the hearing had to be adjourned, P.S. was advised to submit the sale documentation to me for review prior to the next reconvened hearing.

During the second reconvened hearing, testimony regarding the Tenants' claims continued, and A.H. advised that they were seeking compensation in the amount of **\$200.00** for the strata move-in and move-out fees. She stated that these costs were entirely avoidable had the Landlords been upfront with them. They submitted proof that they paid \$100.00 to the strata for moving in and moving out fees.

P.S. advised that these fees were not avoidable as she was not aware of these circumstances in advance, or that the purchaser would not be moving in after the sale had completed.

A.H. also advised that they were seeking compensation in the amount of **\$2000.00** for the cost of October 2018 rent. She outlined the discussions they had with the Landlords prior to signing the tenancy agreement, she stated that the Landlords pressured them to move in early, and they believed the Landlords when it was conveyed to them that this would be their long-term home. Had they known what would have happened, they would not have ended their tenancies at their prior rental units and paid rent for October 2018 to the Landlords.

P.S. disagreed that there was any pressure to sign the tenancy agreement as the Tenants were really interested in the rental unit. She stated that the Tenants had met the purchaser prior to signing the tenancy agreement. As well, she believed that the strata bylaws were grandfathered in, allowing for rental of the unit. However, she discovered that the bylaws had changed after the Tenants had signed the tenancy agreement.

A.H. advised that they were seeking compensation in the amount of **\$462.00** for the cost of extra rent that they had to pay due to having to move so suddenly, as this could have been avoided as well. They were provided with a copy of the Form K on October 3, 2018 and given a copy of the strata bylaws on October 9, 2018.

P.S. again believed that this could not have been avoided and that the Tenants moved within a week of receiving the Notice. She confirmed that the Tenants received a copy of the Form K on October 3, 2018 and were given a copy of the strata bylaws on October 9, 2018.

A.H. advised that they were seeking compensation in the amount of **\$226.00** which represented the cost of cleaning of the two different rental units they moved out of in order to move into the rental unit. Had they not committed to renting from the Landlords, they would not have paid to have the respective rental units, that they moved out of, cleaned. She stated that there was a lot of work required to move from two different rental units into one unit, and because the Landlord wanted them to move in on October 1, 2018, there was a tremendous rush to accomplish this.

P.S. advised that the move-in date was advertised, and the Tenants were aware of this so there was no pressure to move in. She stated that the Tenants were excited to move in together and the cost of cleaning a rental unit at the end of tenancy is avoidable as the Tenants could have cleaned themselves.

Finally, A.H. advised that they were seeking compensation in the amount of **\$37.11** for the cost of utilities that they had to pay at the rental unit during their tenancy. Had they not been duped into believing that this would be a long-term tenancy, they would not have moved in or been required to pay these utility costs.

P.S. advised that the responsibility is on the Tenants to understand the consequences of signing a month to month tenancy. She advised them that anything could change with the sale of the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In reviewing the totality of the evidence before me, the consistent and undisputed evidence is that all parties understood that the rental unit was for sale prior to entering into the tenancy agreement. While there may have been a misunderstanding or a miscommunication between the parties about the impending sale of the rental unit, the undisputed evidence is that the Landlords engaged into a tenancy of the rental unit with the Tenants when they were not permitted to by the strata bylaws. Given that the Landlords were negligent in determining if they were even allowed to rent the unit, I find that their actions led directly to the unnecessary moving of the Tenants.

Based on the evidence presented, I am satisfied that the Tenants would not have incurred moving expenses had the Landlords done their due diligence and realized that they were not permitted to rent the unit in the first place. As such, I am satisfied that the Tenants have substantiated their claims for compensation in the amount of \$535.50 and \$200.00. Consequently, I grant them a monetary award in the amount of **\$735.50** for these claims.

Furthermore, with respect to the Tenants' claims for compensation for October 2018 and a portion of November 2018 rent, given that the Landlords should not have even rented out the unit, I am satisfied that by doing so, they caused the Tenants unnecessary hardship by agreeing to a tenancy and having them move into the rental unit for such a short period of time. Based on the Landlords' actions, I am satisfied that the Tenants' should be compensated in the amount of **\$2,462.00** for the inconvenience of having to endure this circumstance.

Regarding the Tenants' claims for compensation in the amount of \$226.00 for cleaning the rental units that they vacated prior to moving into the unit rented to them by the Landlords, as there was no requirement for them to pay for cleaning, I dismiss these claims without leave to reapply.

Finally, with respect to the Tenants' claims for compensation in the amount of \$37.11 for the cost of utilities while they lived in the rental unit, even though the Landlords engaged in a tenancy when not permitted to, given that the Tenants occupied the rental unit for a brief period of time, I am satisfied that they should still be responsible for the utilities that they used while occupying the rental unit. As such, I dismiss this claim without leave to reapply.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Moving van expenses	\$535.50
Strata move-in and move-out fees	\$200.00

October 2018 rent	\$2,000.00
November 2018 partial rent	\$462.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,297.50

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$3,297.50** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 12, 2020

Residential Tenancy Branch