



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$2,975.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants, the landlords and counsel for the landlords, KH (counsel) attended the teleconference hearing. The parties gave affirmed testimony, counsel made submissions, and the parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Counsel was added as counsel to the landlord's portion of the application and the email address for counsel was also added so that counsel would be sent a copy of the decision also.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2018 and reverted to a month to month tenancy after April 30, 2019. Monthly rent was \$1,875.00 per month and was due on the first day of each month. The tenants stated that they vacated on March 30, 2020, while the landlords stated that the tenants vacated one day later on March 31, 2020.

The tenants monetary claim of \$2,975.00 is comprised of a request for the landlord to return March 2020 rent of \$1,875.00 plus \$1,000.00 for moving costs, and the \$100.00 filing fee. The tenants testified that the landlords discussed rental relief due to street parking being removed by the city. The landlords responded by stating that a discussion was not an agreement, nothing was in writing, and that parking was never included in the tenancy agreement. The tenancy agreement submitted in evidence indicates that parking is not included in the monthly rent.

The tenants also raised the issue of a flood on January 30, 2020 in the rental unit and that the tenants stated that they had to move due to the landlords listing their house for sale. The landlords replied by stating that the tenants were not given a notice to vacate and the tenancy would survive the sale of the home. In addition, counsel submits that it is not the fault of the landlord that the city made the decision to remove street parking and that it has nothing to do with the tenancy agreement between the parties. The tenants referred to a news article submitted regarding the street parking matter.

The landlords also testified that there was a water leak in January 2020, but it was not a huge flood as claimed by the tenants. The landlords stated that there was record rainfall in January of 2020 and that by February 1, 2020, the landlord provided an email update to the tenants indicating that the basement had been cleaned up, heaters and fans were set up, and that the landlords did what was required to fix the water leak to ensure it did not occur again. On February 2, 2020, the tenants replied to the landlords by email indicating that it was “drying fine” with no water and that there was “no need to stop in.”

The landlords presented a document that indicate that there was moisture probe testing, which showed normal moisture and that the damaged baseboards and laminate were to be replaced. The tenants stated that they felt forced to move once the parking was removed by the city and the house was put up for sale. The tenants were advised on February 5, 2020 of the home being placed up for sale.

The tenants referred to an email that claims they consider the sale of the home as a termination of their tenancy, to which the landlords responded that it was not a termination of the tenancy. The tenants stated that the home was 90 years old and that a crack in the foundation was not known and would be a major undertaking.

Counsel stated that the tenants' claim has failed to show a loss, that the landlords have not breach the Act, regulation or tenancy agreement, that rent was payable under the Act, and given that the tenants did not vacate until the end of March 2020, rent was due and payable and that no compensation is required.

Analysis

Based on the above, and on a 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 tenants 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 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.

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.

Based on the above, I find the tenants have failed to provide sufficient supporting evidence in support of their entire monetary claim and have failed to meet all four parts of the test for damage and loss. Consequently, I find the tenants' claim has no merit and fails in its entirety. Therefore, I dismiss the tenants' application in full without leave to reapply due to insufficient evidence.

I have reached this finding by considering that listing a property for sale does not end a tenancy, and that under the Act, the tenancy would survive the sale of the property. Secondly, I agree with the landlords and counsel that there was no written agreement regarding compensation and that parking was not included in the monthly rent, so the tenants have failed to prove the landlords breached the Act, regulation or tenancy agreement.

Furthermore, I afford no weight to the news article regarding parking as parking was not a term of the tenancy agreement. In addition, as the tenants vacated without a notice to end tenancy, I find there is no merit for moving costs, as the tenants made the decision to vacate themselves.

Given the above, I do not grant the filing fee as the tenants' claim has no merit.

Conclusion

The tenants' application is dismissed in full without leave to reapply due to insufficient evidence.

The filing fee is not granted as the tenants' application has no merit.

This decision will be emailed to the tenants, landlords and counsel.

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: November 10, 2020

Residential Tenancy Branch