



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

The tenants filed an Application for Dispute Resolution on November 25, 2020 seeking compensation for the end of tenancy, and compensation for monetary loss. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 18, 2021.

Both the landlords and the tenants attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Are the tenants entitled to monetary compensation for the Notice to End Tenancy for the landlord’s Use of Property, pursuant to s. 51 of the *Act*?

Are the tenants entitled to compensation for their monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Though neither party submitted a copy of the tenancy agreement, they both confirmed details in the hearing. The tenancy started on June 1, 2015. The tenants paid \$2,200 per month and paid a security deposit at the start of the tenancy that was \$1,100.

The landlords issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") on July 18, 2020. This gave the final move-out date of September 20, 2020. They served the document to the tenants directly by leaving a copy in person as well as a copy in the mail slot of the rental unit. The reason for the Two-Month Notice was that "the rental unit will be occupied by the landlord or the landlord's family member" – and the landlords indicated that the "landlord or the landlord's spouse" will occupy the rental unit.

The tenants left the unit after they found a new living arrangement for August 1, 2020. In the hearing they emphasized this was a very short-term move out, this during the difficult time of public health restrictions. They paid the landlord no rent for August and no rent for September. In the tenant's opinion, the landlord had "no complaints and was glad to get [the tenants] out."

a. compensation related to the Two-Month Notice

The tenant's make the claim for reimbursement of twelve months rent, totalling \$26,400. This is because they found out the landlord "tore the house down and [they were] not moving in" – contrary to what they indicated on the Two-Month Notice. Further: "I still talk to my neighbours and no one has moved in. I found it boarded up earlier in November and found it was torn down and [I] feel so defeated and manipulated." The tenant provided pictures showing the boarded-up windows, and the scene after the house unit came down.

The tenants added other details in the hearing:

- their former neighbours let the tenants know that the unit was boarded up – this was "shortly thereafter" the tenancy had ended on October 18
- the former neighbours also informed the tenants that bulldozers came to the scene to demolish the house

- when they moved in to the unit in 2015, the then-realtor told them that “[the landlords] were going to tear it down”
- surveyors visited to the property in spring 2020 – on speaking directly to the surveyors, they didn’t really explain what they were doing – and “they were doing things that surveyors do to tear down a house.”

In the hearing, the landlords’ representative responded on their behalf. With reference to the pertinent sections of the *Act*, the representative presented that, after the landlord’s served the Two-Month Notice, one of the landlords’ parent’s health had deteriorated. This began during the summer of 2020 and the condition worsened within a relatively short period of time. This led to mobility issues which required special equipment, and doctors specifically recommended that the landlords’ family should not move. The condition is that where they “require assistance for all activities of daily living.” The landlords presented evidence from health agencies that show the need for care was ongoing, and the primary caregiver is one of the landlords here. At the site of the rental unit, in order to accommodate the health-related mobility and care concerns, they would have to undertake significant mandatory repairs for the family member’s care. Additionally, they would have to make suitable repairs for living.

The landlords explained their choice to demolish the house was because continuing to operate the rental property was just too expensive, and they were left with no financing to build a new structure on the property. This was in addition to the life-altering events of adjusting for children’s school and the immediate health needs of their family member. By September, they made the choice to demolish the unit, when the family member’s condition began to deteriorate more rapidly. To rent the unit again would require a lot of money – the landlords ended up deciding “it probably was not worth it.”

The landlord addressed the boarded-up windows to say that a vacant home would make insurance premiums increase, so it was necessary to board the windows, unless they wanted to pay a vacant property premium.

The landlord’s responded to the tenants’ observations of surveyors to say they had no idea about any surveyors on the property. The landlords replied to say the tenants never brought this topic to their attention in the past.

b. compensation for appliances and disposal bin rental

The tenants here claim \$4,856 for their replacement of some of the appliances on their own. They purchased a dishwasher new (at a reduced price) to replace the one that just stopped working. They purchased a used stove for the upstairs area and a used washer/dryer.

The tenant stated the amount claimed here is for the \$329 new dishwasher, and approximately \$100 each for the other items purchased off Craigslist. The total amount of the claim is an estimate of what the purchases cost. A portion of this was for “all minor fixes [they] did on [their] own” and the money they had to outlay for poison, cleaning and an exterminator for a pest problem.

The tenants provided evidence in the form of pictures for online ads. This shows a value of \$100 for each of the stove and washer/dryer, and an image of a price sticker from the dishwasher showing at \$329 value.

Their rationale for these purchases was based on their interpretation of the landlord not wanting to attend to the issues throughout the tenancy. Their thinking was: “we either do it or we’ll get evicted or it won’t get done.” They first started to put their own money into obtaining appliances approximately 1.5 to 2 years ago.

The tenants also claimed for the rental of a bin associated with the sudden move when they found a new rental place. This cost was \$556.87 paid on August 17, 2020 as shown in the receipt provided by the tenants.

The landlord maintains they addressed the tenants concerns for repairs as they arose. Evidence for this is in the form of messages to the tenant showing the landlord identifying the use of funds they used for repairs to a garage door. The landlords also provided receipts from 2016 showing miscellaneous other repairs to the rental unit.

There is also a text message showing the landlord’s communication to one of the tenants, instructing them where to pick up a replacement fridge at the store. This is a new refrigerator shown in a receipt dated June 15, 2018 at the cost of \$896.22. In this exchange, the tenants made an inquiry about “the washer and dryer . . . so we bought a new washer and dryer off Craigslist and we have the old ones available for you if you want them.” In response the landlord declined the offer and instructed the tenants to dispose of the old ones.

Analysis

a. compensation related to the Two-Month Notice

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . . an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of 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.
- (3) The director may excuse the landlord . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
 - (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Here, the landlords issued the Two-Month Notice on July 18, 2020. The tenants did not challenge the validity of the Two-Month Notice and moved out by August 1, 2020. Former neighbours advised the tenants that the unit was boarded up; a picture dated October 22, 2020 shows this to be the case. Photos dated November 10, 2020 shows the unit was demolished.

I find the evidence shows the landlords did take steps to accomplish the stated purpose of issuing the Two-Month Notice. The evidence shows they made plans for a move to the area, both with arrangements for children's school and employment. I find the evidence shows these plans were stopped with the onset of a deteriorating health

situation with a family member. The strongest evidence showing the landlords' rationale for not making the move are accounts from medical professionals. One letter sets out that one of the landlords is that parent's primary caregiver; the other letter advises against a move and sets out mobility issues and other care needs.

I find these are extenuating circumstances that prevented the landlords from accomplishing the stated purpose of the use of the rental unit. Therefore, the landlords are excused from paying the monetary amount outlined in s. 49(2).

While the landlords did not take steps to accomplish the stated purpose of issuing the Two-Month Notice, I find extenuating circumstances prevented the landlord from accomplishing that purpose.

The tenants presented that surveyors were at the property sometime in spring of 2020. There is no reason to doubt the tenants' account that surveyors had a presence at that time; however, there is no link to any evidence that shows the landlord had the intention of demolishing the unit at that time.

The tenants also presented that the original realtor who arranged their tenancy stated the landlords had plans to demolish the rental unit. The tenancy was ongoing for five years, and the tenants received no other information about this within that time. There is no evidence of prior attempts by the landlord to end the tenancy. I find the tenants' submission on this point is inconclusive and without evidence.

For these reasons, I excuse the landlords from paying the 12-month rent equivalent. They have shown that extenuating circumstances were present that prevented them from accomplishing the stated purpose indicated on the Two-Month Notice. This portion of the tenants' Application is dismissed without leave to reapply.

b. compensation for appliances and disposal bin rental

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on what the tenants have presented here, I am not satisfied that a monetary loss exists.

The tenants added miscellaneous items under this portion of the claim. In the hearing I asked the tenants to specify what the \$4,856 amount consists of. The tenants answer to my query was non-definitive and one of them answered this was “pick a number”.

I appreciate there was a need for appliances throughout the tenancy and I accept the evidence from the tenants that a few replacements were made along the way. They have not provided sufficient evidence to establish the value of that loss. Further, with no evidence of appliance deterioration and no clear evidence of their replacement, I cannot establish that a monetary loss exists. The photos simply show advertisements from an online sales outlet – there is no indication of dates of purchase, and an accurate dollar amount is not provided. While there is an image that shows the price label on the face of the dishwasher, there is no evidence to the purchase made, or for what reason.

Minus this proof, there is no award for loss from the appliances. There is no evidence of requests for replacement or repair of these items to the landlord, and the message in the evidence dated June 15, 2018 shows the tenants advising the landlords of their purchases after the fact.

The tenants also presented that part of this amount represents money they paid for a pest problem in the past. There is no evidence of the tenants paying amounts for this in the past.

The amount paid for the bin is not tied to any breach of the *Act* or the tenancy agreement by the landlord; therefore, this cost does not rest with the landlord.

The tenants have not overcome the burden of proof to establish the value for their loss here. With the lack of evidence, the tenants have not proven that a damage or loss

exists. There is no award for monetary compensation to the tenants. This portion of the tenants' claim is dismissed without leave to reapply.

Because they were not successful in their Application, there is no reimbursement of the Application filing fee to the tenants.

Conclusion

For the reasons outlined above, I dismiss the tenants claims, 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 *Act*.

Dated: February 19, 2021

Residential Tenancy Branch