



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On November 5, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of the security deposit and for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

One of the Landlords and both Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter

The Tenants testified that the Landlord did return the security deposit after they were served notice of this hearing. The Tenants requested to withdraw this issue from their Application. Pursuant to the Rules of Procedure, I find that the issue is withdrawn and will not be addressed during this hearing.

Issues to be Decided

Should the Tenants receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. Unless

otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on April 1, 2020. The rent was \$1,425.00 and due on the first of each month. The Landlord collected and has since returned a security deposit in the amount of \$700.00. The Tenants moved out of the rental unit on November 1, 2020.

The Tenants testified that they received a One Month Notice to End Tenancy from the Landlord in October 2020 with a move-out date for November 30, 2020.

The Tenants are claiming compensation for a for a week of lost work and for the month's rent of October 2020 as the Landlords interfered with the Tenants' quiet enjoyment of their rental unit.

The Tenants submitted text messages between the Landlord and the Tenant and testified that the Landlord's language was rude and made them feel like they were doing something wrong. The Tenants stated that the Landlords, in October 2020, were constantly texting them and complaining about the Tenants' noise when they weren't being noisy. Furthermore, the Landlords told them to move if they were not happy living in the rental unit; making the Tenants feel unwelcome in their own home.

The Tenants stated that they found a hidden camera outside in a Christmas tree that the Landlords had set-up on the residential property in October 2020. The Tenants removed the camera and complained to the police. The Tenants acknowledged that the police investigation did not find there was an invasion of privacy; however, that the Landlords should have advised the Tenants of the camera. Tenant BK stated that anxiety of knowing the Landlords were watching her, resulted in her having to attend the hospital and made her feel unsafe.

The Tenants recounted an incident where the Landlords were attempting to give them notice of entry and banged on the door very loud. The Tenant BK was home alone and did not feel comfortable answering the door. The Tenants stated the Landlords taped the notice to the door and that it covered the eye hole.

The Tenants testified that the issues noted in the Notice to End Tenancy were not fair but did not want to dispute the eviction as they wanted to leave the negative environment. Tenant BK stated that she took the last week of October 2020 off from work to find a new place to live. Tenant BK stated that she found a new rental and subsequently, gave the Landlords 3 days notice and moved from the rental unit.

The Tenants submitted a letter of employment and are requesting compensation for the last week of October 2020, where she took a week off to look for a new rental unit. The Tenants are claiming \$1,400.00 in wage losses.

The Tenants request compensation for the rent they paid for October 2020 as the Landlords interfered with their quiet enjoyment of the unit. When asked, the Tenants acknowledged that they had full access to their rental unit, the use of the bedrooms to sleep and the kitchen to cook without any interference from the Landlords; however, that the Landlords' actions throughout the end of their tenancy made them feel harassed and unsafe. The Tenant are claiming \$1,400.00 in compensation.

The Tenants are requesting compensation for the costs that they incurred as a result of mailing the Notice of Dispute Resolution package to the Landlords, in the amount of \$27.17.

The Landlord testified that he served the Tenants the Notice to End Tenancy for smoking on the property and for stealing the surveillance camera. The Landlord stated that the Tenants did not dispute the notice and were given until the end of November 2020 to find a new place to live. The Landlord submitted that the Tenants chose to take their time off work and had plenty of time to find a new place to live.

The Landlord acknowledged the security camera that was placed on the side of the house and stated that the RCMP cleared him of any wrongdoing.

The Landlord acknowledged that there were heated exchanges between the Landlords and the Tenants and stated that the Tenants were also rude.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Tenants have claimed a loss due to Tenant BK taking the last week of October 2020 off from work. I acknowledge that the Tenants wanted to leave, what they felt like

was a negative environment, and find a new place to live. However, when I consider section 67 of the Act, I find that the Tenants chose to end the tenancy early and have failed to provide sufficient evidence that the loss of income stemmed directly from the Landlords' violation of the Tenancy Agreement or the Act. Specifically, I do not find that the Landlords' actions caused Tenant BK to take the last week of October 2020 off. As a result, I dismiss this part of the Tenants' claim.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. *Residential Tenancy Policy Guideline #6* further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The Tenants alleged the Landlord disturbed their quiet enjoyment of the rental unit in three manners. Specifically, the Landlords sent them rude texts; the Landlords, on at least one occasion, banged loudly on the front door; and, the Landlords set up a surveillance camera on the residential property. All of this caused the Tenants to feel uncomfortable and unsafe in their tenancy with the Landlords.

Based on the Tenants submissions, I find that the Tenants have failed to demonstrate that the Landlords' actions of banging on the door and sending text messages were *frequent and ongoing*. Furthermore, I accept that the RCMP did not find that the surveillance camera was illegal or that the Landlord had done anything wrong.

As section 67 of the Act references, the Tenants bear the burden of proof and in this case, I find that the Tenants have failed to provide sufficient evidence that they suffered a loss of quiet enjoyment, contrary to section 28 of the Act. As a result, I find that the Tenants have failed to provide sufficient evidence that they suffered a loss as a result of the Landlords' breach of the Tenancy Agreement or the Act. As such, I dismiss this part of the Tenants' claim.

The final portion of the Tenants' Application concerns the costs associated with registered mail. My abilities to award compensation are restricted by section 67 of the Act which are described above and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the Tenants a return of the registered mail fees.

I find that the Tenants were wholly unsuccessful with their Application and as such, do not award compensation for the filing fee.

Conclusion

I dismiss the Tenants' application in its entirety 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: February 24, 2021

Residential Tenancy Branch