



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNETC

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

The tenants, JR and HV, and the tenants' assistant/support attended the hearing; however, the landlord did not attend.

The tenants stated they served the landlord with their application for dispute resolution and Notice of Hearing by registered mail on December 17, 2020. The tenants provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

I accept the tenants' evidence that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the tenants' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the tenants and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The participants were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The participants were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, all participants affirmed they were not recording the hearing. The participants did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Have the tenants submitted sufficient evidence to be granted monetary compensation from the landlord and to recover the cost of the filing fee?

Background and Evidence

The tenants submitted that this tenancy was set to begin on September 1, 2020, that monthly rent was to be \$2,750, due on the first day of the month, and that the tenants paid a security deposit of \$1,375 to the landlord. Filed into evidence was a copy of the signed written tenancy agreement.

The tenants submitted that they were notified by the landlord on August 5, 2020, that they could not move into the rental unit.

The written tenancy agreement showed a numbered corporation as the landlord, although the tenants listed an individual. The tenant explained that they named the individual as he was the only person they dealt with in these matters.

The tenant confirmed that the landlord has returned their security deposit.

The tenants' monetary claim is \$34,000, comprised of \$33,000, which is due under the Act for having received a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), and \$1,000.

In support of their application, the tenants submitted that they are entitled to \$33,000 as the landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period of time after the effective date of the notice.

The tenants submitted they believed the landlord did not use the property as stated for why he was ending the tenancy and his story did not make sense.

The tenants confirmed that they were not served a Two Month Notice to End Tenancy for Landlord's Use of Property, but rather, they received text messages from the landlord saying he was a tenant of the property owner and the other tenants in the residential property were refusing to vacate. This resulted in the landlord not being able to let the tenants move into the rental unit.

As to the tenants' claim for \$1,000, the tenants explained that they were told less than a month before the tenancy was to start that they could not move into the rental unit. This caused them to spend hours in finding another place to live on short notice. They expended additional time as they had to travel from one town to the town where the rental unit was located.

The tenants also submitted that they spent a lot of time in preparing for the dispute resolution and going to the post office.

The tenants also submitted they are entitled to interest on their security deposit, as the landlord did not return it immediately.

The tenants' agent, WR, submitted that the landlord's action left four people without a place to live, on short notice, which caused a lot of stress. WR submitted that the landlord's attitude was very flippant and he did not have an honest intention in ending the tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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 each of 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 whatever 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 tenant. 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 whatever was reasonable to minimize the damage or losses that were incurred.

The claiming party, the tenants in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Compensation equivalent to 12 months rent –

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use for multiple reasons listed in this section.

Section 49(7) of the Act requires that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]* of the Act.

The tenants here asserted that the landlord did not use the property as stated for why he was ending the tenancy.

In this case, when a landlord seeks to end a tenancy for any of the reasons listed in this section of the Act, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy.

Section 52 of the Act applies in this case and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

[My emphasis added]

As to the tenants' claim for compensation, Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

What this means is, the triggering event entitling a tenant to receive compensation equivalent to 12 months rent under the tenancy agreement as compensation is being served with the proper Notice.

In this case, the tenants relied on text messages from the landlord informing them the rental unit would not be available for moving in on the agreed upon date.

I therefore find the tenants are not entitled to receive the equivalent of 12 months' rent due under the tenancy agreement rent as they did not receive a notice which complied with section 49 or 52 of the Act.

As a result, I dismiss the tenants' claim for \$33,000.

Claim for \$1,000 –

Rule 2.5 of the Rules states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. Applicants are provided with instructions in the application package as to these evidence requirements.

In this case, I accept that the landlord/respondent did not allow the tenancy to begin, contrary to the signed written tenancy agreement. I, however, find the tenants submitted insufficient evidence to support this claim. As mentioned, the applicant is obligated to prove the value of the loss.

The tenants failed to provide a breakdown of the components of this claim. For instance, the tenants mentioned that they were required to spend unexpected, additional time in traveling and securing a new accommodation; however, they did not provide a breakdown of hours spent or costs in traveling.

The tenants mentioned they spent time in preparing for dispute resolution. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred in preparing for dispute resolution.

Additionally, the Act does not provide for interest on a security deposit paid in 2020.

For these reasons, I find the tenants submitted insufficient evidence to prove the value of their loss, and as a result, I dismiss the tenants' claim for \$1,000.

Conclusion

For the above reasons, I dismiss the tenants' application due to insufficient evidence, 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: April 21, 2021

Residential Tenancy Branch