



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to compensation for loss or damage under the Act, regulation or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee?

Background, Evidence

The tenants gave the following testimony. LL testified that they were going to move into the subject unit on October 1, 2020 with a monthly rent of \$1600.00 due on the first of each month. LL testified that they had paid the first and last months rent up front. LL testified that the landlord has returned \$1600.00 to them already. LL testified that since the home they were living in was sold, they needed to be out on September 30, 2020. LL testified that she spoke to the landlord about moving in on September 30, 2020. LL

testified that during the month prior to the move in the landlord's behaviour and mixed messaging caused them great concern and panic. TP testified that the landlord "kept moving the goal posts" resulting in the tenants deciding that this was going to be a bad situation and that they couldn't move in. The tenants testified that they are seeking \$5974.00 as compensation. The tenants seek \$1600.00 for the last months rent and the balance is for costs incurred for moving, lodging, dog kennel, meals, and other miscellaneous costs in the amount of \$4374.00. LL testified that the \$5974.00 is well below the actual amount of costs incurred.

The landlord gave the following testimony. The landlord testified that the tenants chose not to move in. The landlord testified that the move in date and time was ongoing and that he simply asked a question; if the tenants could move in at noon on October 1, 2020. The landlord testified that the tenants "snapped" at this question and decided not to move in. The landlord testified that he agreed that this tenancy shouldn't go forward after the response he received from the tenants. The landlord testified that he is out two months rent for the tenant's actions but decided to part ways and move on.

Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of "liar and fraud" to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

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 that 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 claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the tenants claim and my findings as follows.

Each party testified that the other terminated the tenancy before it started. Both parties signed a tenancy agreement that states that the tenancy was to begin on October 1, 2020. The tenants testified that the landlord refused them access to the unit, however,

as the landlord stated in his testimony “I asked them if they could move in at noon on the 1st, it was just a question”. LL stated that after the landlord asked this question “we were done”. The tenants were unclear and vague as to why this question upset them so much that they felt that they couldn’t move in especially since they had already spent time moving over many items and setting up storage tents/shelter on the property. After reviewing the evidence and considering the testimony of the parties, I find that the tenants ended this tenancy of their own volition and set off a chain of events that were a result of their own actions, and as a result; the tenants are not entitled to the recovery of any of the costs incurred or any compensation.

The tenants have not been successful in this application, accordingly; the tenants’ application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant’s application is dismissed 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: April 27, 2021

Residential Tenancy Branch