



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDET, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed on December 31, 2020, for compensation from the landlord that is related to a Notice to End Tenancy for Landlord's Use of Property in the amount of \$49,450.00 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to ask questions of the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed that they were not making any unauthorized recording of the hearing, in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

At the outset of the hearing, I questioned whether I had jurisdiction under the Act, as the amount claim is greater than my authority of \$35,000.00., because if the tenant was entitled to compensation under section 49 and 51(2) of the Act, that amount would be equal to the amount of \$25,800.00. There were no details on how the tenants arrive at the additional amount of \$23,650.00, putting this matter outside of my statutory limit.

I had also considered dismissing the tenant's application with leave to reapply because section 59 of the Act required a party to provide the full particulars of the claim, that would include a detail monetary calculation.

The tenant testified that they amended their application and they only changed the amount from \$49,450.00 to \$35,000.00. I do not see any amendment filed. However, the Article Student for the landlord stated that they wanted to proceed with the hearing based on the reduced amount. Therefore, I found it appropriate to proceed with the hearing.

The tenant did not provide a monetary worksheet with a detail calculation of how they arrived at the amount claimed, even at the reduced claim. The tenant stated they calculated the original amount as they want all the rent they paid during their tenancy returned.

Issue to be Decided

Are the tenants' entitled to monetary compensation?

Background and Evidence

The tenancy began on December 1, 2018. Rent in the amount of \$2,150.00 was payable on the first of each month. A security deposit of \$1,075.00 was paid by the tenants. The tenancy ended on December 1, 2020.

The tenant testified that on September 12, 2020, that the landlord wanted them to leave the house and offered them two months free rent, and then later changed that to three months free rent. The tenant stated they were furious when they were served with a One Month Notice to End Tenancy for Cause issued on September 25, 2020, with an effective date of November 30, 2020. The tenant stated they did not dispute the notice. The tenant stated that the landlord made false allegations in the notice.

The tenant testified that they also received a 10 Day Notice to End Tenancy for Unpaid Rent on September 25, 2020, which they did not dispute. The tenant stated that the landlord made false allegation in the notice to end tenancy because the rent was paid.

The tenant testified that the landlord's conduct was unlawful as they just wanted to expel their family from the premise under false allegation and under pandemic circumstances. The tenant stated that the landlord had filed an application for dispute resolution scheduled for January 14, 2021, for an order of possession; however, the landlord withdrew that application after they had vacated the premise. The tenant stated they did not want to leave the property.

The tenant testified the second reason why they believe they are entitled to the return of rent is because the landlord was trespassing, breach their right to quiet enjoyment, reasonable privacy and freedom from unreasonable noise.

The tenant testified that the beginning of the tenancy the landlord hung around the house, especially in the backyard. The tenant stated at first they did not say anything; however later asked the landlord if they would give prior notice in advance before entering their home.

The tenant testified that in 2019, their wife was shocked by noticing someone passing by in the backyard while she was taking a shower. The tenant stated that they saw the landlord leaving the backyard towards the parking area. The tenant stated that they do not remember the date.

The tenant testified that in 2019, they asked the landlord again not to intrude into their home when I met him in the front when they were cutting some bushes in the front yard. The tenant testified that they were seriously sick and were awoken by a very disturbing noise coming from the ceiling of their bedroom and they found the landlord fixing and cleaning something on the roof. I again asked him not to enter my home.

The tenant testified that in November 2019, the landlord again attended to fix something. The tenant stated that they were told by their wife that the landlord suddenly tried to open the door of the kitchen area.

The tenant testified that the trespassing never stopped during their tenancy.

The tenant testified that they were also harassed by the landlord by repeatedly communication with them and continuously waiting for them outside of their home and engaged in threatening behaviour.

The Article student for the landlord stated that the tenants did not dispute the One Month Notice to End Tenancy for Cause or the 10 Day Notice to End Tenancy. The Article student stated that the tenants were presumed under the Act to have accepted that the tenancy was ending for the reasons stated in the notice.

The Article student for the landlord stated that the tenant has not met the burden of proof.

The landlord testified that they deny trespassing or harassing the tenants. The landlord stated that it was the tenant threatening and causing them problems and making false allegation which they reported to the police on two occasions

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I accept the landlord offered on September 2020, the tenants money if they would vacate the premise in 30 days. However, there is no evidence that the tenants accepted that offer and it is not supported because the tenants did not leave until December 1, 2020.

The tenant filed their application based on receiving a Two Month Notice to End Tenancy for Landlord's Use of Property. However, the tenants did not receive such a notice. The tenants received a One Month Notice to End Tenancy for Cause, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on September 25, 2020, neither of those notices were disputed.

I find the tenants cannot now argue the validity of those notices to end the tenancy. The tenants had the right to dispute the merits of those notices to end the tenancy by filing an application for dispute resolution within the statutory time limit. The tenants did not dispute either of the notices to end tenancy and under section 46(4) and/or 47(5) of the

Act, they are conclusively presumed under the Act to have accepted the notices and must vacate the rental unit.

I also accept the landlord withdrew their application for dispute resolution, which was scheduled to be heard on January 14, 2021, as they were seeking an order of possession, based on the undisputed notices. I find the landlord had the right to withdraw their application if they felt that they no longer required an order of possession and this allowed the time to be used for other matters waiting to be scheduled. This is not a breach of the Act.

In this case, the evidence of the tenant was the landlord was trespassing as they would be in the backyard hanging around, cutting bushes, or making repairs. Firstly, this is not inside the rental unit, which the landlord is required to give 24 hours notice when they want to enter the premises. The landlord is entitled to be at the premises for legal purposes, such as speaking to the tenants, making repairs to the exterior of the property and maintenance to the property, such as cutting bushes. I find the tenant has failed to prove a violation of the Act.

Although I did not hear testimony from either party, except the tenants referred in their submissions that the landlord was using a portion of the premise to gain extra rent by renting. This leads me to believe the tenants did not have exclusive possession of the entire property, and a portion was held for the landlord's own use or to rent, which would mean the landlord was entitled to be on the property, in any event.

I am also not satisfied that the tenants have met the burden of proof that they were harassed. I have read the text messages of both parties and nothing leads to believe this is harassment. It was the tenant that was referring to the landlord as mentally ill, despicable and a mudslinger. The text messages were about the tenancy, even if the tenant did not agree with the contents, that does not mean it was harassment. The landlord had the right to communicate with the tenants in any form regarding the issues of the tenancy, and if the tenants did not want to receive text messages, it was within their control to block messages received this way.

Further, the tenant is seeking return of all rent they paid for during the course of the tenancy, I find that is unreasonable and not justifiable, as the tenants had a duty to mitigate the loss and do what is reasonable to minimize the loss, the tenant presented no evidence that made any attempts to mitigate, such as making an application during their tenancy if they truly felt the landlord was trespassing or harassing them.

Based on the above, the tenants' application is dismissed without leave to reapply. The tenants are not entitled to recover the cost of the filing fee.

Conclusion

The tenants' application is dismissed 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: May 17, 2021

Residential Tenancy Branch