



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, MNETC

Introduction

This hearing was convened in response to the Tenants' application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement and for compensation related to a being served with a Notice to End Tenancy for Landlord's Use of Property.

The male Tenant stated that on January 08, 2021 the Dispute Resolution Package and the evidence the Tenants submitted to the Residential Tenancy Branch in January of 2021 were sent to each Respondent, via registered mail. The Tenants submitted Canada Post documentation that corroborates this statement.

The Agent for the Landlord acknowledged receipt of the aforementioned documents. He stated that he is representing the Landlord with the initials "CK", who is his wife, and he is assisting the Landlord with the initials "LS", who is his mother. On the basis of this testimony, I find that all parties named in this Application for Dispute Resolution have been properly served with notice of this hearing, pursuant to section 89 of the *Residential Tenancy Act* (Act). The hearing therefore proceeded in the absence of the Landlord with the initials "CK", and the evidence was accepted as evidence for these proceedings.

The Landlords submitted evidence to the Residential Tenancy Branch in April of 2021. The Agent for the Landlord stated that on April 17, 2021 this evidence was personally served to the Tenants. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

In the evidence package the Landlords itemized monetary losses experienced by the Landlords. The parties were advised that these proceedings related solely to claims being made by the Tenants in their Application for Dispute Resolution.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Are the Tenants entitled to compensation for utility costs?

Are the Tenants entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The Landlords and the Tenants agree that:

- The Tenants and the Landlord with the initials “CK” signed a fixed term tenancy agreement, the fixed term of which ran from September 01, 2016 and September 01, 2017;

- The Tenants and the Landlord with the initials “LS” signed a fixed term tenancy agreement, the fixed term of which ran from September 01, 2017 and September 01, 2018;
- Term 37 of the second tenancy agreement declared that the Tenants must vacate the rental unit by August 31, 2018, as the rental unit is being demolished;
- At the end of the tenancy the monthly rent was \$1,200.00;
- Neither party gave written notice to end the tenancy;
- The rental unit was vacated by August 31, 2018;
- The keys to the rental unit were returned on August 31, 2018; and
- The Tenants were not given any compensation pursuant to section 51(1) of the *Act*.

The Tenants are seeking compensation of \$1,200.00, pursuant to section 51(1) of the *Act*, and compensation of \$14,400.00, pursuant to section 51(2) of the *Act*, both of which relate to being served with notice to end tenancy by the Landlord.

The male Tenant stated that the rental unit was vacated by August 31, 2018 in accordance with term 37 of the second tenancy agreement. He stated that when the Tenants vacated the rental unit, they did not realize the legislation no longer permitted a landlord to end a fixed term tenancy on the basis of a planned demolition. The Agent for the Landlord stated that the Landlord understood the rental unit was vacated by August 31, 2018 in accordance with term 37 of the tenancy agreement.

The Agent for the Landlord stated that:

- When the second tenancy agreement was signed, the Landlord intended to demolish the rental unit in September of 2018;
- The Landlord did not demolish the rental unit in September of 2018, as the Landlord did not yet have all the appropriate permits;
- Demolition of the unit began in January of 2019;
- A “couple of months” prior to August 31, 2018, his wife told the Tenants they could remain in the rental unit after August 31, 2018;
- In August of 2018 his wife sent the Tenants a text message, in which she informed them they could remain in the rental unit after August 31, 2018;
- In August of 2018 the Tenants told the Landlord they had found alternate accommodations;
- The Landlord re-rented the rental unit after it was vacated by the Tenants, as the permits were not yet in place for the demolition; and
- The rental unit was demolished in April of 2019.

The female Tenant stated that:

- In the summer of 2018, she told the Landlord they were looking for alternate accommodation;
- The Tenants did not ask the Landlord if they could remain in the rental unit after August 31, 2018;
- In August of 2018 the Landlord informed the Tenants, via text message, that demolition of the unit was postponed;
- The text message they received in August of 2018 was the first time the Landlord had told them the demolition was being postponed; and
- By the time the Landlord informed them they could remain in the unit past August 31, 2018, they had already found alternate accommodations.

The male Tenant stated that when this tenancy ended, the Tenants were informed that the demolition was being delayed because the Landlord did not wish to demolish the unit during the winter.

The Tenants are seeking to recover hydro charges, in the amount of \$171.00. In support of this claim the male Tenant stated that:

- The Tenants paid the entire hydro bill for this residential complex;
- There was an agreement that the occupants of the upper suite in the complex would pay 60% of the costs of all hydro bills;
- When the occupants of the upper suite moved out, the Landlord began using the upper suite for short term rentals;
- When the occupants of the upper suite move out, the Landlord agreed to pay 60% of the cost of all hydro bills;
- The Landlord currently owes the Tenants \$171.00 for hydro costs; and
- The Landlord has not paid the \$171.00 outstanding charges.

The Agent for the Landlord stated that:

- The Tenants paid the entire hydro bill for this residential complex;
- After the occupants of the upper suite moved out, the Landlord agreed to pay 60% of the cost of all hydro bills;
- He agrees the Landlord owed the \$171.00 hydro costs being claimed by the Tenants; and
- He is not sure if the \$171.00 debt was ever paid by the Landlord.

The Tenants are seeking compensation, in the amount of \$300.00, for loss of quiet enjoyment of the yard.

In support of this claim the male Tenant stated that:

- On June 07, 2018 the Landlord erected a fence around a portion of the rear yard;
- The fence prevented the Tenants from using approximately 1/3 of the rear yard;
- The rear yard was for the sole use of the Tenants;
- The occupants living in the upper portion of the rental unit had the sole use of the front yard;
- The rear yard was fully fenced prior to this fence being erected;
- He understands the fence was erected in preparation for demolishing the rental unit, but the Landlord could have waited until the demolition was to commence;
- The fence prevented the Tenants from using the only shaded area of the yard, which limited the amount of time the Tenants' small children could play in the yard; and
- The fence made moving out of the unit more difficult, as it prevented them from parking closer to the entrance to the unit.

In response to the claim for loss of quiet enjoyment, the Agent for the Landlord stated that:

- On June 07, 2018 the Landlord erected a fence around a portion of the rear yard;
- The fence prevented the Tenants from using approximately 20% of the rear yard;
- The rear yard was for the shared use of the Tenants and the occupants living in the upper portion of the rental unit;
- The fence was erected to protect habitat during the demolition;
- The rear yard was not fully fenced prior to this fence being erected;
- The fence needed to be in place before demolition permits would be approved; and
- The fence did not prevent the Tenants from enjoying the rear yard.

The Tenants were unable to identify any term in the written tenancy agreement that declares they are entitled to sole use of the rear yard.

The Tenants submitted an aerial photograph and a planned drawing of the yard, which show where the fence was erected.

Prior to the conclusion of the hearing, each party was asked if they had additional submissions and both parties confirmed they did not.

Analysis

On the basis of the undisputed evidence, I find that the Tenants and the Landlord with the initials “CK” entered into a written tenancy agreement, which began on September 01, 2016.

On the basis of the undisputed evidence, I find that the Tenants and the Landlord with the initials “LS” entered into a written tenancy agreement, which began on September 01, 2017. The second tenancy agreement declared that the Tenants must vacate the rental unit by the end of the fixed term of this tenancy agreement, which was August 31, 2018, because the rental unit was being demolished.

Section 104.3(1) of the *Act* came into force on December 11, 2017. Section 104.3(1) of the *Act* stipulates that if a fixed term tenancy agreement entered into before this section comes into force requires a tenant to vacate the rental unit on a specified date, the requirement to vacate the rental unit ceases to have effect as of the date this section comes into force, except

- (a) if the tenancy agreement is a sublease agreement,
- (b) if circumstances prescribed under section 97 (2) (a.1) apply, or
- (c) if, before the day this *Act* receives First Reading in the Legislative Assembly,
 - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or
 - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

Section 97(2)(a.1) of the *Act* permits the Lieutenant Governor in Council to make regulations prescribing the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term.

Section 13.1(2) of the *Residential Tenancy Regulations* stipulates that for the purposes of section 97(2)(a.1) of the *Act*, a landlord may include a term in a fixed term tenancy agreement that requires the tenant to vacate a rental unit at the end of the fixed term only if the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Pursuant to sections 104.3(1) and 97(2)(a.1) of the *Act* and section 13.1(2) of the

Residential Tenancy Regulations, I find that term 37 of the second tenancy agreement, which required the Tenants to vacate the rental unit on August 31, 2018, was not enforceable. Section 13.1(2) of the *Residential Tenancy Regulations* does not permit a landlord to require a tenant to vacate a rental unit at the end of a fixed term for the purposes of demolishing the unit.

I therefore find that the Tenants were not required to vacate the rental unit on August 31, 2018 on the basis of term 37 of the tenancy agreement. No evidence was submitted that would cause me to conclude that either party understood that the Tenants were not required to vacate the rental unit on the basis of term 37 of the tenancy agreement.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 49(6)(a) of the *Act* permits a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Landlord did not have all the permits and approvals necessary to demolish the rental unit by the time this tenancy ended on August 31, 2018. As such, I find that prior to August 31, 2018 the Landlord did not have the right to end the tenancy for the purposes of demolishing the unit, pursuant to section 49(6)(a) of the *Act*, and the Landlord did not serve the Tenants with proper notice to end the tenancy pursuant to section 49(6)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As has been previously stated, the term in the tenancy agreement that required the Tenants to vacate the rental unit on August 31, 2018 was not enforceable. I therefore cannot conclude that this tenancy ended pursuant to section 44(1)(b) of the *Act*, although I find it highly likely that both parties believed that it was ending on the basis of that term of the tenancy agreement.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant

agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenants returned the keys to the rental unit on August 31, 2018, at which time the unit was fully vacated. I therefore find that the tenancy ended on August 31, 2018 pursuant to section 44(1)(d) of the *Act*.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Section 60(1) of the *Act* stipulates that if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As I have determined that this tenancy ended on August 31, 2018, I find that the Tenants were required to file their Application for Dispute Resolution by August 31, 2020.

Section 60(2) of the *Act* stipulates that Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3). Subsection 3 stipulates that if an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this *Act*, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Residential Tenancy Branch records show that the Tenants filed this Application for Dispute Resolution on January 01, 2021, which is well past the deadline established by section 60(2) of the *Act*. As the Tenants did not file this Application within the time period established by section 60(2) of the *Act*, I find that their claim ceases to exist and I dismiss all claims for compensation made in this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply, as it was not filed within the time period established by section 60(2) of the *Act*.

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 09, 2021

Residential Tenancy Branch