



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 6, 2021.

Preliminary Issue(s)

The tenants seek an order to cancel the 1 month notice; an order for the landlord to comply; and a monetary claim for compensation. The tenants request for the landlord to comply is regarding the landlord providing the tenants with laundry and heat. The tenants request for monetary compensation of \$3,200.00 is regarding return of the security deposit, moving costs.

At the outset, the tenants clarified that the tenancy has now ended as a result of the tenants complying with a 2 month notice to end tenancy for landlord's use. The landlord confirmed that the tenants have vacated the rental unit. Both parties confirmed the landlord has returned the \$800.00 security deposit to the tenants. The tenants' request to cancel a 1 month notice and the request for the landlord to comply were cancelled by the tenants. The tenants stated that they now only seek monetary compensation for complying with the landlord's 2 month notice of \$2,300.00 reduced from \$3,200.00 as the \$800.00 security deposit was returned and \$100.00 for the filing fee for a different application for dispute filed.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 15, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 15, 2018. The monthly rent is \$1,700.00 payable on the 15th day of each month. A security deposit of \$800.00 was paid.

Both parties confirmed that the \$800.00 security deposit was returned by the landlord to the tenants.

The tenants seek a monetary claim of \$2,300.00 which consists of:

\$100.00	Filing Fee
\$500.00	Moving Costs
\$1,700.00	Compensation, Sec. 51 (1) 1 months rent for complying with notice

The tenants despite not selecting the recovery of the \$100.00 filing fee seek recovery of this expense if successful in this application as it was detailed as "First dispute notice: \$100 Second dispute notice: \$100". The tenants confirmed that they used the wrong words to describe their request for recovery of the filing fee. The landlord confirmed

that they understood this portion of the tenant's claim to be referring to the \$100.00 filing fee for this application.

The tenants seek recovery of \$500.00 in moving costs as a result of complying with the landlord's 2 month notice to end tenancy.

The tenants seek \$1,700.00 as compensation for complying with the landlord's 2 month notice for landlord's use of property. The tenants stated that they did not pay the last months rent and gave notice to the landlord to vacate the rental unit on March 1, 2021. The landlord confirmed that a 2 month notice was served to the tenants and that the tenant vacated the rental unit on March 1, 2021, however, the landlord argued that monthly rent is \$1,600.00 and not \$1,700.00 as claimed by the tenants. The landlord also confirmed that the tenants 1 month compensation was already credited to the tenants for the last month's unpaid rent. The landlord stated that compensation of \$800.00 is due to the tenants as the tenants had not paid any rent for the last month before vacating the rental unit and can be compensated for the March 1 to 15th portion of the last month. The landlord referenced bank statements and direct deposit details which shows that the tenants have been paying \$1,600.00 on a monthly basis to the landlord. The tenants argued by relying on the incomplete signed tenancy agreement that the tenants completed and returned to the landlord which states that monthly rent is \$1,700.00. Both parties confirmed that there is no signed tenancy agreement by both parties. Both parties referenced a \$100.00 laundry fee, but neither party provide any supporting details.

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the tenants seek compensation equal to one months rent they claim is \$1,700.00. The landlord has disputed that monthly rent is \$1,600.00. Both parties confirmed that there is no signed tenancy agreement by both parties. The landlord has however, provided undisputed affirmed testimony that she has bank statements

showing monthly payments of \$1,600.00 to the landlord. I find that the incomplete tenancy agreement signed by the tenants does not show acceptance of the agreement by the landlord. On this basis, without any supporting evidence from the tenants, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. I find that monthly rent is \$1,600.00.

Residential Tenancy Branch Policy Guideline #50, Compensation for Ending a Tenancy states in part,

This policy guideline addresses the requirements for a landlord to pay compensation to a tenant when:

- *a landlord ends a tenancy for landlord's use of the property;*
- *a landlord, or purchaser as applicable, has not taken steps to accomplish the stated purpose for ending the tenancy or fails to use the rental unit for the purpose the notice was given;*
- *a landlord ends a tenancy for renovations or repairs, the tenant exercises a right of first refusal, and the landlord does not give the tenant a 45 Day Notice of Availability and a new tenancy agreement to sign.*

Section B. Compensation for ending tenancy for landlord's use states in part,

*Section 51(1) of the RTA and section 44(1) of the MHPTA require a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a notice to end tenancy for landlord's use under section 49, that complies with the requirements set forth in Section 52 [form and content] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, **an amount that is the equivalent of one month's rent payable under the tenancy agreement.***

In this case, both parties have confirmed that the tenant is entitled to compensation equal to one months rent which is \$1,600.00 for complying with the 2 months notice. On this basis, the tenants are not entitled to additional compensation of moving costs of \$500.00 as filed. The only compensation specified under the Act is the one months rent. This portion of the tenants application is dismissed. I also find that the tenants' are entitled to compensation for complying with the 2 month notice equal to one months rent of \$1,600.00.

The tenants are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,700.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: June 1, 2021

Residential Tenancy Branch