



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

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 via Canada Post Registered Mail on April 3, 2021. The tenants stated that in the same package the tenants provided copies of their documentary evidence. The landlord argues that no documentary evidence was included with the package. The tenant stated that an additional memory stick containing an audio file was also served to the landlord. The landlord confirmed receipt of this evidence as claimed. Neither party raised any other service issues. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on August 13, 2021. I accept the undisputed affirmed evidence and find that the landlord was properly served with the notice of hearing package as per section 89 of the Act. On the tenants' documentary evidence, save the audio file, I find as there is no proof of service and the landlord has stated that no such evidence was included in the notice of hearing package that these 13 documentary evidence files are excluded from

consideration as I find that I am not satisfied that they were served to the landlord. The tenants' audio file evidence is deemed served based on the landlord's direct testimony.

At the end of the hearing the landlord also argued that the tenant's application should be dismissed as the tenant has already had the issue litigated. The landlord argues that the tenant had previously filed the same dispute which was decided upon on a decision dated March 4, 2021 (file number noted on the cover of this decision) on the same issue. In that decision the tenant's application was dismissed. In that decision it states in part,

*...I accept the undisputed affirmed evidence of the tenant and find that a two month notice to end tenancy for landlord's use of property was served to the tenant. However, despite the tenant providing copies of advertisements for renting the unit, the tenant relies upon a verbal statement from a neighbor, J.R. who stated that renovations were completed and that someone had finally moved-in. The tenant was asked if she had confirmed if the new landlord had moved-in or was it a new tenant. The tenant responded that she did not check and was "assuming" that it was a new tenant". **On this basis, I find that the tenant was pre-mature in her application for compensation and has failed to provide sufficient evidence that the landlord did not move-in to the rental unit. This portion of the application is dismissed...***

The landlord also argued that that decision was reviewed and dismissed as well. In a Review Decision dated March 24, 2021. It states in part,

*... For this reason, I dismiss the Tenant's application for review consideration as their application does not disclose sufficient evidence of a ground for review. However, it shall be noted that in the original decision dated March 7, 2021, the Arbitrator found that; "the tenant was pre-mature in her application for compensation and has failed to provide sufficient evidence that the landlord did not move-in to the rental unit. This portion of the application is dismissed." **The Arbitrator in the original decision dated March 7, 2021 did not indicate that the Tenants' Application was dismissed without leave to reapply. Therefore, the Tenants are at liberty to submit a new Application for monetary compensation should they feel inclined to...***

The tenants' original application was dismissed and leave to reapply was not denied. The landlord's request to dismiss the tenants' application is denied.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for 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.

The tenants seek a monetary claim of \$15,820.00 which consists of:

\$15,720.00	Compensation, Sec. 51, Fail to take steps (12 months X \$1,310.00)
\$100.00	Filing Fee

The tenants provided written details which states:

12 months compensation as outlined in the tenancy branch regulations. Evicted due to tenant use of property and re rented to someone who was not family.
[reproduced as written]

The tenants clarified that the tenants were served with a 2 month notice to end tenancy for landlord's use of property for which they had complied and the reason selected was:

All conditions for the sale of the rental unit have been satisfied and the purchaser has asked that landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants stated that the original notice had an effective end of tenancy date of November 30, 2020, but that the tenants gave notice to end the tenancy early for November 2, 2020.

The tenants stated that after they vacated the rental unit, they found that it is now occupied by a tenant who is not related to the landlord/owner.

The landlord confirmed that a "Tenant Occupied- Buyers Notice to Seller for Vacant Possession" was completed and given to the tenants. The landlord also confirmed that the current occupant is a tenant and not related to the landlord.

The landlord seeks to be excused under section 51 (3) of the Act regarding extenuating circumstances. The landlord stated that the property was purchased with the intent of the landlord occupying one part of a duplex while the other (the tenants' unit) would be occupied by the landlord's son. The landlord stated that in March/April of 2020 the landlord's son was furloughed from training due to COVID and would be subject to recall at a later time to be determined. The landlord stated the notice was issued on August 31, 2020 to end the tenancy on November 30, 2020, but the tenants gave notice to end the tenancy on November 2, 2020. The landlord argued that the plan to have the landlord's son occupy the unit was frustrated as he was recalled on November 10, 2020 and report back for training on January 8, 2021. The landlord submitted a copy of a "text message" detailing the dates.

The tenant argued that according to the landlord's submissions the landlord received a call in October 2020 advising him that he may be recalled early to training sometime in 2021. It also stated that was confirmed when he was recalled in November 2020.

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 claim the landlord confirmed that a "Tenant Occupied- Buyers Notice to Seller for Vacant Possession" was completed and given to the tenants. The tenants confirmed that they received a 2 month notice to end tenancy for landlord's use of property in that "All conditions for the sale of the rental unit have been satisfied and the purchaser has asked that landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." Both parties confirmed that tenants vacated the rental unit on November 2, 2020.

Section 51 of the Act states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement 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 the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this claim the tenants argue that the landlord's son did not occupy the rental unit and that it was subsequently re-rented to another party. The landlord has confirmed that the rental unit was not occupied by the tenant and was subsequently re-rented. However, the landlords have argued that tenancy was frustrated and as a result the landlord's son was not able to occupy the rental unit as he was recalled to duty as he is a member of the armed forces and training was cancelled due to COVID. The landlord submitted a copy of a "text message" dated November 10, 2020 notifying him of his start date of January 8, 2021.

Section 51(3) of the Act states in part that the Director may excuse the landlord if in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy and using the rental unit for that stated purpose for at least 6 months duration.

In this case, It is clear that the landlord failed to take steps to accomplish the stated reason for ending the tenancy by having the landlord's son occupy the rental unit. However, I find that the landlord has provided sufficient evidence to satisfy me that extenuating circumstances did occur in that the landlord's son who was on furlough was recalled to the military to continue training and as such was not able to occupy the rental unit. I note that the "text message" received was on November 10, 2020 which was after the tenants' end of tenancy on November 2, 2020. Despite the landlord having an indication that the landlord's son might be recalled in October 2020 it mentions the recall to begin in 2021. The landlord would not be able to cancel the 2 month notice in any event. On this basis, the tenants' application for monetary compensation is denied as the landlord has satisfied the arbitrator that extenuating circumstances occurred.

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: August 30, 2021