Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, MNCL-S, FFL

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for money owed or loss;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a Two Month Notice to End Tenancy for Landlord's Use of Property; and
2. To recover the cost of filing the application.

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

The parties confirmed that they have received each others evidence.

The parties confirmed that the tenants vacated the rental unit on August 31, 2021. Therefore, I find I do not need to consider the merits of the tenants' application or the landlords' application for an order of possession.

Issues to be Decided

Are the landlords entitled to a monetary order for money owed or loss?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2016. Rent in the amount of $1,450.00 was payable on the first day of each month. A security deposit of $700.00 was paid by the tenants.

The landlords testified that the tenants were served with a Two Month Notice for Landlord's Use of Property, issued on April 30, 2021, with an effective date of June 30, 2021. The landlords stated that the tenants disputed the notice to end tenancy solely to give them more time to vacate the premises and purchase their own home.

The landlords testified that they had to relocate their son and store his belongings. The landlords stated that their son had to pay rent of $1,500.00 and storage costs of $300.00.

The tenants testified that the landlords' son was relocated to another rental property owned by the landlords. The tenants stated that they had a right to dispute the notice to end tenancy and it was not their fault when the hearing was scheduled four months later.

The tenants stated that there was a verbal agreement with the decease agent of the landlord that they would be given six months notice to vacate; however, they were only given two months.

The tenants testified that the rental market in their area is very low especially for a family of their size. The tenants stated that they decided to purchase their own property and were able to vacate the premises on August 31, 2021.

The landlords argued that their son was relocated to another property they own in a different area because of this long delay; however, they are entitled to receive rent from their son. The landlords stated these expenses would not have incurred by their son because he would not have had to put his belongings in storage or pay them rent as there was to be a different agreement relating to the rental unit.

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 landlords have the burden of proof to prove their claim.

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 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.

Section 49 (8) of the Act states,

> A tenant may dispute
>
> > (a)a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
> >
> > (b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.
>
> (9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
>
> > (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
> >
> > (b)must vacate the rental unit by that date.

In this case, I am not satisfied that the landlords have proven a violation by the tenants under of the Act. The tenants disputed the notice given within 15 days of receiving the notice by filing their application for dispute resolution on May 12, 2021. I find the tenants have complied with section 49(8) of the Act.

The tenants' application was scheduled to be heard on September 20, 2021. I accept that waiting four (4) months for a hearing date that is relating to a notice to end tenancy is unfair; however, this was not within the control of either party and any complaints regarding the long hearing waits should be sent to the Director.

While I find it more likely than not that the tenants disputed the notice for the sole purpose of delaying the process, which is an abuse of process. However, that alone is not a violation of the Act.

I accept that the landlords' son was displaced and had to be relocated and may have had unforeseen expenses. However, as I cannot find a breach of the Act by the tenants, I find the landlords are not entitled to compensation.

Had the tenants failed to dispute the notice given and failed to vacate the rental unit on the effective date of the notice, I would have found a breach of the Act and considered compensation. However, that is not the case before me.

Based on the above, I find I must dismiss the landlords' application without leave to reapply. In most cases, I would make an order for the return of the security deposit as that was claimed against in the landlords' application. However, that application was made prior to the tenancy ending.

At the hearing the tenants did not want to provide the landlords with their forwarding address as required by section 38 of the Act. Therefore, I find the tenants are not entitled to the return of the security deposit until they comply with the Act.

Once their forwarding address is given to the landlords. The landlords will have 15 days to either repay it or make an application for dispute resolution claiming against the security deposit if there were other issues at the end of the tenancy. This cannot be related to the issues that was heard in this application, as I have dismissed the landlord's application without leave.

Conclusion

The landlords' application is dismissed without leave to reapply. 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: September 23, 2021