Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

On June 14, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation for pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing as well, with A.B. and G.V. attending as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenants advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on July 9, 2021, but they did not serve their digital video evidence. G.V. advised that the Tenants named A.B. as the Respondent on the Application and this was not correct as A.M. was the Landlord. As such, they elected not to submit any evidence for consideration as it was his assumption that this Application would be dismissed. However, he confirmed that A.M. received the Notice of

Hearing and evidence package by registered mail in mid-July 2021 and that they were prepared to proceed with the hearing.

As G.V. confirmed that A.M. was the Landlord and that she had received this Notice of Hearing and evidence package in mid-July 2021, I am satisfied that she has been duly served the Notice of Hearing and evidence package. Furthermore, as she had sufficient time to review and respond to this package, the failure to submit evidence on G.V.'s assumption that this Application would be dismissed rests on the Landlord. Moreover, as G.V. confirmed that they were prepared to proceed regardless, I do not find that there would be any prejudice to the Landlord. Pursuant to Section 64 of the *Act*, this Application and the Style of Cause on the first page of this Decision has been amended to reflect the proper name of the Landlord. As, I am satisfied that the Landlord was sufficiently served the Notice of Hearing and evidence package, I have accepted the Tenants' evidence, with the exception of their video evidence, and will consider it when rendering this Decision.

All parties agreed that the Tenants gave up vacant possession of the rental unit on July 31, 2021. As such, the matters with respect to cancelling the Notice and an Order to comply are moot points and do not need to be considered.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2005 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on July 31, 2021. The rent was established at an amount of $1,120.00 per month and it was due on the first day of each month. A security deposit of $450.00 was also paid. A written tenancy agreement was not created by the Landlord, as required by the *Act*.

As the Tenants' requests to cancel the Notice and for an Order to comply were moot, the Tenants outlined their claims for compensation. G.V. confirmed that the Landlord understood these claims and was prepared to proceed.

The Tenants advised that they were seeking compensation in the amount of **$1,500.00** in moving expenses because they were "forced" to move when they were served the Notice dated June 30, 2021 that had an effective end date of the tenancy as July 31, 2021. Despite disputing the Notice and not being required to give up vacant possession of the rental unit until the validity of the Notice was determined in this hearing, they vacated the rental unit anyways. They stated that they were required to move due to the disturbances of the tenant below them, causing Tenant S.G. to suffer serious health issues. They did not submit any documentation to support the cost of these moving expenses. As well, they did not submit any medical documentation to substantiate that they suffered from any health issues, nor was there any documentary evidence provided to corroborate that any alleged health issues were attributed to any disturbances during their tenancy.

G.V. advised that they were not aware of any disturbances from the downstairs tenant, and he submitted that the Tenants moved willingly.

The Tenants also advised that they were seeking compensation in the amount of **$16,800.00** because they were good Tenants but were given the Notice despite this, and they were forced to move unnecessarily. They stated that a tenant moved below them in October 2020, and this person was noisy and slammed doors, which was stressful. They submitted that the tenant below caused petty issues like using the Tenants' garbage cans, that he insulted the Tenants verbally, that he threatened to have them evicted, and that they had a disagreement with the use of the laundry.

They did not address these concerns with the Landlord in writing; however, they spoke with A.B. about these issues, but nothing was ever addressed with the tenant downstairs. They also stated that they did not have heat for three days in December

2020 and that they were accused of breaking into a common area of the property when they opened a door to allow access for the repairperson to fix the heating issue.

They advised that G.V. became involved and he held a meeting on May 24, 2021 whereby some issues were discussed. However, the Tenants were in shock as this meeting was more in the nature of G.V. bullying them. They then referenced a text message exchange, submitted as documentary evidence, in mid-July 2021 where G.V. threatened them with an axe. They reported this threat to the police and when the police contacted G.V., he acknowledged that he should not have uttered that threat. The Tenants did not choose to pursue this threat any further.

They submitted that their claim for $16,800.00 was calculated as the amount of one month of rent for each of the fifteen years that they lived in the rental unit. However, they could not elaborate on how they determined this specific amount requested.

A.B. advised that the Tenants had lived in the rental unit for a considerable amount of time, and they became entitled due to this extended tenancy. She stated that the Tenants also caused petty disturbances over garbage cans, laundry, and the square footage used by all of the occupants of the property. She submitted that the Tenants never addressed their concern in writing to the Landlord and that she only received one text from them about the downstairs tenant’s noise. She testified that the Tenants overreacted on account of their entitlement and disagreements with the downstairs tenant.

G.V. advised that he became involved when the Tenants had problems with the downstairs tenant; however, this person did not play loud music or cause disturbances. He stated that he arranged the meeting on May 24, 2021 with the Tenants to discuss the parameters of the tenancy. He submitted that Tenant M.K. gets aggressive, that he swears, that he has explosive episodes, and that he scared some young girls that were on the property. He alleged that the Tenants broke into an area of the property to give access to the furnace repair person.

He confirmed that he sent the text to the Tenants regarding the use of an axe; however, when he was confronted by the police, he stated that he mistakenly used “heavy wording” and that the police agreed with this assessment. He refuted that this text was a threat, but more of a “pressure tactic”. He acknowledged that he was angry and that he should not have used the words that he used, but he was frustrated with the ongoing issues.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants' first claim for compensation in the amount of $1,500.00 for moving expenses, I note that the Tenants disputed the Notice, so they were not required to move when they did. However, they elected to do so by their own choice. While they claimed to have been "forced" to move, I do not find that they have submitted persuasive evidence to support this allegation. In addition, they have submitted no medical documentation to support that they suffered from any ill health effects as a result of something occurring during the tenancy, which would have required them to move. As well, even if this claim was substantiated, they submitted no documentary evidence to support the actual cost of the moving expenses. As such, I am not satisfied that the Tenants submitted sufficient, compelling evidence to justify this claim. Consequently, I dismiss it in its entirety.

Regarding the Tenants' claim for $16,800.00, it is apparent that the main source of conflict here is due to the deterioration of the relationship between the Tenants and the downstairs tenant, and this relationship had become contentious and heated. I note that it is incumbent on persons living in a shared complex to co-exist together peacefully, and it is not the role of the Landlord to manage personal differences between their tenants. However, when disputes devolve to the point that the parties' right to quiet enjoyment may be compromised, it is up to the Landlord to investigate the issue after being advised of the problem to determine if there is any fault of one or both of the parties.

When reviewing the totality of the evidence before me, I find that the Tenants have provided little supporting evidence to establish that there was anything here more than personality conflicts between the Tenants and the downstairs tenant that they were unable to resolve. As such, I am not satisfied that the Tenants' right to quiet enjoyment was breached due to the behaviour and actions of the downstairs' tenant as I find that the Tenants were also likely responsible for contributing to the dysfunction in this relationship.

Furthermore, they stated that their issues with the downstairs tenant began in October 2020, yet their claim was for the equivalent of 15 years of compensation. As they did not have these alleged problems spanning 15 years back, I find that this demonstrates that the basis for the Tenants' claims is clearly flawed and not well reasoned. I am satisfied that the Tenants have failed to establish any loss that is remotely close to the amount claimed as this amount appears to have simply been chosen as a random, punitive figure.

However, when G.V. became involved, while it may have been an attempt by the Landlord to manage the dysfunction between the tenants, it is also apparent that his behaviour and efforts had the opposite effect of successfully mediating the deteriorating relationship between the parties. In reviewing the text messages that he sent to the Tenants, he stated, “you ate[sic] playing games with the wrong person” and “Lol I ALWAYS GET MY WAY. I warned you a[sic] have a very heavy axe try me and you will see the results.” When these texts are given a plain language reading, I find that there is no other way to interpret these other than as direct threats to the Tenants. I do not find his claims that the police did not also read these words in the same manner to be reasonable or likely.

When assessing his testimony during the hearing, I found his demeanour to be confrontational, and his testimony to be evasive and inconsistent. As such, I give little weight to the credibility or reliability of his submissions. I am satisfied that G.V. clearly meant this text to be a threat and he was not mistaken with the wording that he used. I find that this is supported by his acknowledgement that he was angry and that he was attempting to apply pressure to the Tenants.

While I acknowledge that managing conflicts between parties can be difficult and frustrating, if G.V. was brough in to assist the Landlord in managing her property, these behaviours and actions are clearly not effective methods in mediating disputes, and they cannot be condoned. I am skeptical that G.V.’s approach to handling the dysfunction between the tenants of the property was anything more than unreasonably authoritarian and heavy handed. Given that I am satisfied that G.V. was more likely than not a factor in contributing to the dysfunction in the relationship with the tenants of the property, rather than an effective manager of the issues, I find that the Tenants’ right to quiet enjoyment was breached for a time. However, as they provided little compelling evidence to substantiate the actual value of loss that they suffered, I grant the Tenants a monetary award of **$315.00** for the loss due to G.V.’s management style from when he began this role in May 2021. This amount is calculated as 10% of the monthly rent from May 2021 to July 2021.

As the Tenants were partially successful in this Application, I find that the Tenants are entitled to recover the filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Loss of quiet enjoyment	$315.00
Filing Fee	$100.00
Total Monetary Award	**$415.00**

Conclusion

Based on the above, the Tenants are provided with a Monetary Order in the amount of **$415.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this 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: October 16, 2021

Residential Tenancy Branch