



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FFT LRE OLC MNDCT

Introduction

The tenants applied for various relief under the *Residential Tenancy Act* (“Act”).

The tenants, one of the landlords, and that landlord’s counsel attended the hearing. The non-attending landlord, while named as a respondent in this matter, was not represented by counsel. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue 1: Non-Monetary Claims

The tenants initially applied for (1) an order cancelling a notice to end tenancy, (2) an order to restrict the landlords’ right of entry into the rental unit, and (3) an order for the landlords to comply with the Act, the regulations, or the tenancy agreement.

The parties gave evidence and confirmed that the tenancy ended on September 30, 2021. As the three non-monetary claims relate to matters that are no longer in issue because the tenancy has ended, those moot claims are dismissed without leave to reapply.

Preliminary Issue 2: Section 51(2) Claim for Twelve Months Rent Compensation

The tenants amended their application on September 13, 2021 to add an additional claim for \$22,015.08. This is, as described in their *Tenant Request to Amend a Dispute Resolution Application*, based on their seeking compensation in the amount of twelve months’ worth of rent. While the tenants’ description is such that the amount is sought “for eviction that is not in good faith a both reasons for terms have been proving wrong by [landlords] [sic],” the only section of the Act which permits a claim for an amount equivalent to twelve months rent is one made under section 51(2) of the Act.

This section of the Act reads as follows:

Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this dispute, the tenancy ended on September 30, 2021. The tenants' claim under this section was made, through an amendment to their application, on September 13, 2021. As of today, October 7, 2021, less than a month has passed. In other words, the minimum six months' duration (beginning within a reasonable period after the effective date of the Notice) has not yet passed.

Given the above, I conclude that the tenants' amended application for compensation under this section of the Act is premature and cannot be considered.

Landlord's counsel argued that because the tenancy was ended pursuant to the tenants' notice to end tenancy, that the tenants ought not be given leave to reapply. On this point, it is worth noting that the landlords served a Two Month Notice to End Tenancy (the "Landlord's Notice") on June 23, 2021. The effective end date of tenancy as indicated on the Landlord's Notice was September 1, 2021. A copy of the Landlord's Notice was in evidence. The tenants gave their notice to end tenancy nearer to the end of August 2021. The tenants' notice was submitted into evidence, is titled "Notice to Move Out," and is dated August 24, 2021.

While a tenant may give notice to end a tenancy to a landlord after a tenant receives a Two Month Notice to End Tenancy, this notice must be given in accordance with section 50 of the Act. In this case, it was not. As such, while the tenants' notice gave "notice" that the tenancy would end on September 30, 2021, the effective end date of tenancy on the Landlord's Notice was in fact September 1, 2021.

If anything, the tenants' notice to end the tenancy was tantamount to a notice that they would become overholding tenants (leaving aside the fact that the Landlord's Notice was effectively suspended pending the outcome of the tenants' application to dispute that notice).

In any case, that the tenants did not give a notice to end tenancy that complied with the Act, and despite the fact that they did not pay rent for September 2021, none of these facts give rise to a reason why the tenants are prevented from making a future claim against the landlords pursuant to section 51 of the Act. Landlord's counsel argued that any such claim must be barred, but I am not persuaded by the facts or by the law that they ought to be barred from making a future application under this section.

For these reasons, if, after a period of six months have passed (excluding any reasonable period as determined by the tenants), the tenants assert a claim for compensation under section 51 then they may file a new application for dispute resolution. In respect of the amended application before me, however, the tenants' claim is dismissed with leave to reapply.

If landlord's counsel disagrees with this decision or my analysis in respect of the tenants' claim for compensation under section 51(2), specifically in regard to my granting leave to reapply, he is at liberty to submit a request for correction pursuant to [78\(1\)](#) of the Act outlining the legal basis on which the claim ought to be dismissed *without* leave. A copy of any such request for correction must be served on the tenants pursuant to section 78(2) of the Act. Last, any such request for correction must be submitted to the Residential Tenancy Branch within 15 days of the party receiving a copy of this decision.

The only remaining monetary claims that will be considered, then, is the \$5,000.00 claim for loss of quiet enjoyment and the \$100.00 claim for recovery of the cost of the application filing fee.

Issues

1. Are the tenants entitled to compensation for loss of quiet enjoyment?
2. Are the tenants entitled to recovery of the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 1, 2017. Monthly rent was \$1,834.59. There was no security or pet damage deposit, and there was no written tenancy agreement in place.

According to the tenants' Monetary Order Worksheet, they seek \$1,000.00 for each month from April to August 2021, inclusive, as compensation for the landlords' breach of their right to quiet enjoyment.

The tenants testified that the landlord's son (the other named landlord in this dispute) harassed the tenants for more than a year. Indeed, the other landlord (that is, the mother) had "nothing to do with" the son's harassing behavior. The son "put his mom in a bad place." The landlord would send texts and calls and harassed the tenants and told them that he did not care about the Act or the Residential Tenancy Branch. It was "non-stop harassment" explained the tenant.

In addition, the tenants testified that the landlord shut the gas off even though the tenants had given him money to pay the bills. The son apparently sent eviction notices by text. Last, the tenant testified that there is a separate shop rented out on the property which was used by drug dealers coming and going at all hours of the day. (Landlord's counsel objected to the tenants' recollection of hearsay evidence at this point.)

Landlord's counsel then cross-examined the tenant about various matters. Both parties testified to issues involving whether the tenants were looking for a new home to purchase, and some of this was spoken about by the tenant during cross. Later, the tenant testified under cross that there also existed harassment "in a sense because there were drug dealers walking around our yard."

The landlord testified a bit about the description of the property and about the circumstances of the Landlord's Notice, and how they intend to occupy the entire upstairs and downstairs (that is, the rental unit) of the residential property. In respect of the interpersonal issues between the landlord P.P. and the tenants, the landlord explained that she took over management of the property around mid-June 2021 "when things started getting ridiculous." In fact, she only became aware of the escalating conflict between P.P. and the tenants fairly late into the tenancy.

The tenants submitted voluminous copies of text messages between them and primarily the landlord P.P.

Analysis

Claim for Loss of Enjoyment

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the loss?

The above-noted criteria are based on sections 7 and 67 of the Act.

Under [section 28](#) of the Act a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to a landlord's right to enter under the Act, and, the use of common areas for reasonable and lawful purposes.

In this dispute, while the landlord (hereafter the landlord P.P. until otherwise indicated) and the tenants had frequent text message conversations during the tenancy, the evidence of these texts (including the erroneous statements made by the landlord) does not persuade me to find that they were tantamount to a breach of the tenants' quiet enjoyment. Many of the texts were initiated by the tenants regarding various matters, and the responses from the landlord were, though frequently misinformed, simply responses to those texts. What is more, the alleged breach of the tenants' quiet enjoyment occurred in the form of text messages. Text messages can be ignored, and a phone can be turned silent.

In respect of the claim regarding the gas being turned off, this incident occurred before the period for which the claim for compensation (that is, April to August 2021) covers and as such cannot be considered. Last, in respect of the claim of the supposed drug dealers wandering around, there is insufficient evidence before me to make any finding that a breach of the Act occurred resulting from those individuals' presence on the property.

It is not lost on me, of course, that the landlord dealt with matters in what can only be considered an immature and misinformed manner. He spoke frequently of the tenants getting a good deal on rent because the rental unit was priced below market rate. However, a landlord is required by law to have a written tenancy agreement in place that outlines, in specific detail, the amount of the rent and so forth. A diligent landlord prices rent accordingly and informs themselves about their rights and obligations under the Act. Unfortunately, the landlord M.K. let her son mismanage the property, and it was not until “things started getting ridiculous” that she took over managing the property.

That having been said, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving that the landlords breached section 28 of the Act.

Certainly, while the tenants’ dealings with the landlord P.P. were anything but pleasant, they do not, I conclude, rise to the level of a breach of the Act. For this reason, I need not consider the remaining three criteria on which a claim for compensation must be proven. This aspect of the tenants’ application is dismissed without leave to reapply.

Claim for Cost of Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants did not succeed in their application, I decline to grant their claim for \$100.00 for the application filing fee.

Conclusion

The application is dismissed without leave to reapply. (Subject to the claim for compensation under section 51(2) of the Act, which is dismissed with leave to reapply.)

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 8, 2021

Residential Tenancy Branch