



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNL, FFT, MNDC**

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed they represented all named applicants. The landlord represented themselves with assistance.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties testified that this tenancy has ended with the tenant providing vacant possession of the rental unit on October 3, 2021. The tenant withdrew the portion of their application seeking cancellation of the 2 Month Notice as this tenancy has already ended.

The tenant requested to amend their application for dispute resolution and add a monetary claim for damages and loss pursuant to section 67 of the Act. The tenant indicated that the portion of their application seeking an order of compliance against the landlord pertains to seeking a monetary award for what they believe to be breaches of the Act, regulation or tenancy agreement. The landlord did not object to the amendment and testified that they were aware of the tenant's intention to seek a monetary claim and were prepared to speak to the issue.

Section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure grants me the authority to allow a party to amend their application and add to claims made in their application. As the parties both acknowledged that they were aware of the tenant's intention to seek a monetary claim and testified that they were prepared to speak to the issue, I find that the present circumstances were foreseeable and there is no issue of procedural fairness or undue prejudice to the parties to amend the application. Accordingly, I allow the tenants to amend their application by adding a claim for a monetary award for damages and loss pursuant to section 67.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in January 2018. The current landlord assumed this tenancy when the previous landlord, a family member, passed away in October 2020. There is no written tenancy agreement. The monthly rent at the end of the tenancy was \$500.00 payable on the first of each month. There was a security deposit of \$250.00 which was returned to the tenants at the end of the tenancy in accordance with the *Act* and regulations. The landlord assumed this tenancy when the previous landlord, a family member, passed away in October 2020.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated August 29, 2021 which the tenant acknowledges receiving on that date. The 2 Month Notice provides an effective date of October 31, 2021. The parties testified that the tenants vacated the rental unit on October 3, 2021. The tenants were permitted to withhold rent for October 2021 pursuant to their right to compensation under section 51(1) of the *Act*. As the tenants vacated the rental unit on October 3, 2021 the landlord provided the pro-rated balance of approximately \$450.00 to the tenant as compensation in the amount equivalent to one month's rent pursuant to section 51.

The tenant characterizes the 2 Month Notice as invalid and says they were forced to vacate the rental unit. The tenant now seeks a monetary award in the amount for the difference in rent they are paying for a new tenancy they entered after vacating. The tenant also submits that there were agreements with the previous landlord that they would be reimbursed or compensated for various work they performed on the rental unit. The tenant submits into evidence handwritten calculations seeking a monetary award of \$4,274.12. The tenant did not provide a new tenancy agreement showing the amount they are paying for their current tenancy, any documentary evidence of an agreement with the previous landlord or any receipts or invoices for their expenditures.

The landlord testified that they are unaware of any agreement between the tenant and the previous landlord for reimbursement.

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.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the applicant bears the onus of proof on a balance of probabilities.

I find that the tenants have not established any portion of their claim on a balance of probabilities to show a basis for a monetary award. I find the tenant's submissions regarding the conduct of the landlord or the basis for the issuance of the 2 Month Notice to be unsupported in the evidence or irrelevant to the matter at hand. I find the tenant's submissions consist primarily of conjecture and accusations with little support or merit. I find the conduct of the tenants in vacating the rental unit and accepting compensation in the amount equivalent to one month's rent contradicts their assertion that they believed the 2 Month Notice to be of no force.

I find the tenant's statement that there was an oral agreement with the previous landlord for compensation and reimbursement to be refuted by the present landlord, not supported in any documentary materials and have little air of reality.

Furthermore, I find the tenants have failed to provide evidence to verify the amount of their monetary claim. The tenants have provided no receipts, invoices, bills or tenancy agreements to show how they arrived at the figures handwritten on their note. The tenant failed to provide testimony explaining the figures, the work that was done on the rental unit or when the parties entered into an agreement for reimbursement.

Based on the paucity of evidence on the part of the tenants I find they have failed to meet their evidentiary onus and consequently dismiss their application in its entirety without leave to reapply.

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: January 10, 2022

Residential Tenancy Branch