



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “*Act*”):

- An order under s. 49 to cancel a Two-Month Notice to End Tenancy;
- An order for monetary compensation under s. 67;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, tenancy agreement and/or the Regulations; and
- Return of their filing fee pursuant to s. 72.

T.B. and A.K. appeared as the Tenants. I.F. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants indicate that the Notice of Dispute Resolution and their evidence was served by way of registered mail sent on March 11, 2022 and May 20, 2022. The Landlord acknowledges receipt of both registered mail packages, the first being received on March 16, 2022 and the second on May 26, 2022. I find that the Tenants have served their application materials in accordance with s. 89 of the *Act* and was acknowledged to have been received by the Landlord at the hearing.

The Landlord advised that she served her response evidence on the Tenants by way of registered mail sent on May 31, 2022. The Tenants confirmed receipt of the Landlord’s evidence. I find that the Landlord served her response evidence on the Tenants in accordance with s. 89 of the *Act* and was acknowledged to have been received by the Tenants at the hearing.

Preliminary Issue – Tenants' Claim

At the outset of the hearing, the parties confirmed that the Tenants vacated the rental unit on April 28, 2022.

As the tenancy is over, the issues raised under the Tenants' claim to cancel the Two-Month Notice under s. 49 and an order that the Landlord comply with the *Act* under s. 62 are no longer relevant. Accordingly, the Tenants' claims under s. 62 and 49 are severed from the claim.

The hearing proceeded strictly on the basis of the Tenants monetary claim.

Issue(s) to be Decided

- 1) Are the Tenants entitled to a monetary order?
- 2) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires a party to present the evidence they submitted at the hearing. I have reviewed all written and oral evidence presented to me at the hearing. However, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on May 1, 2021.
- As mentioned above, the Landlord obtained vacant possession of the rental unit on April 28, 2022.
- Rent of \$3,500.00 was due on the first of each month.
- The Tenants paid a security deposit of \$1,750.00 to the Landlord.

A copy of the written tenancy agreement was put into evidence by the parties. The tenancy agreement indicates that it was for a fixed 1-year lease, after which point the Tenants were to vacate. However, both parties confirmed their understanding that the tenancy was to continue at the end of the term. The Tenants emphasized that they were seeking a long-term rental as they were seeking to start a family together in the coming

years. The Landlord confirmed her intention was to reside in the 1-bedroom laneway she had built on the property.

In the Tenants telling, issues arose in the tenancy beginning in January 2022 when they reported the fireplace was no longer working. At the same time, there was an interruption in natural gas service due to a gas leak, though the Tenants were unclear how long the interruption lasted. The Tenants indicate that the fireplace was the central heat source for the living room and was cheaper to operate than the furnace.

The Landlord confirmed the fireplace was broken and advised that she obtained tradespeople to look into the issue. She indicates that she was told that the fireplace could not be repaired and would need to be replaced. I am told by the Landlord that the residential property, which is a single detached house, was extensively renovated in 2017. At that time, the fireplace was installed at that time at a cost of approximately \$6,000.00, so too was a high efficiency furnace. The Landlord advised that she did not have the financial means to pay for the fireplace's replacement.

There were discussions between the parties regarding the fireplace in January and February 2022. The Tenants had asked for a letter from the Landlord indicating that the fireplace would be replaced by September 2022 as that was when they would need it again for the winter. The Landlord confirmed that it was her intention to give the Tenants a letter to this effect.

Rather than obtain the letter with respect to the fireplace, the Tenants indicate they received a letter dated February 28, 2022 giving them two-months notice to vacate the rental unit (the "Eviction Letter"). The Tenants argued that the eviction was in direct response to their complaints with respect to the fireplace.

The Landlord denies the eviction was related to the fireplace. The Landlord testified that her daughter told her on February 27, 2022 that her father was moving away on May 1, 2022. The Landlord says her daughter lived with her father and would need alternate accommodations considering her father would be moving away. The Landlord says that the 1-bedroom laneway was insufficient for this purpose.

In the Tenants' Notice of Dispute Resolution, they seek compensation of \$9,050.00, which is based on the return of the security deposit, two-months rent in compensation, and \$300.00 for the fireplace interruption. The Tenants did not provide a monetary order worksheet.

At the hearing, the Tenants advanced a markedly different monetary claim, in which they sought the following:

- \$2,000.00 for the security deposit at their new rental.
- \$2,000.00 for the pet damage deposit at their new rental.
- \$700.00 for the cost of moving to their new place.
- \$525.00 for the cost of a mould inspection at their new place.
- \$1,000.00 for packing supplies, in relation to moving to their new place.
- \$500.00 for painting their new place.
- \$1,200.00 for lost wages for moving and distress related to the loss of the rental unit.

No amendment to the Tenants' application was ever filed.

It was argued by the Tenants that the Landlord breached the tenancy agreement by issuing the Eviction Letter. They testified to a level of emotional distress brought about by the end of the tenancy and the sudden need to find new accommodations. As mentioned above, the Tenants intended to reside within the rental unit over the long-term and further indicated it was their intention to start a family together in the coming years.

For the Landlord's part, she indicates that circumstances changed and that she was forced to bring about an end to the tenancy such that she could provide accommodation for her and her daughter. The Landlord further stated that she paid the Tenants \$250.00 for the loss of the fireplace at their request and returned 1 month's rent to the Tenants at the end of the tenancy. The Landlord advised with respect to a level of uncleanliness at the rental unit and further advised that, despite the uncleanliness, she returned the security deposit, in full, to the Tenants at the end of the tenancy.

The Tenants did not deny receiving the security deposit of \$1,750.00, one month's rent of \$3,500.00, or the \$250.00 for the fireplace as advised by Landlord at the hearing.

Analysis

The Tenants seek monetary compensation brought about by the issuance of the Eviction Letter.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenants made vague arguments of distress and betrayal related to the end of the tenancy. However, it is entirely unclear what provisions of the *Act*, the Regulations, and/or the tenancy agreement were breached by the Landlord.

The tenancy ended after the Tenant's vacated the rental unit on April 28, 2022. The Tenants point to the eviction and the Eviction Letter as a breach of the tenancy agreement. I accept that the Tenants held the expectation that their tenancy would be on a long-term basis. However, the Tenants expectations do not impinge on the Landlord's ability to end a tenancy as permitted under the *Act*. In other words, a landlord has the right to end a tenancy in accordance with s. 49 regardless of the parties intentions that a tenancy be on a long-term basis.

The Tenants claimed the return of their security deposit in their application. The Landlord advised that she did so at the end of the tenancy, which was not disputed by the Tenants.

The issue of the fireplace and its repair appears to have been settled. The Landlord advised and I accept that the Tenants asked for \$250.00 in compensation for the loss of the fireplace. The Tenants did not deny this at the hearing. Their Notice of Dispute Resolution seeks \$300.00, which appears to be in direct contravention of the settlement of \$250.00. To the extent that the Landlord may have breached s. 32 of the *Act*, I find that it has been compensated already as per her payment of \$250.00 the Tenants.

I find that the Tenants have failed to show that the Landlord breached the *Act*, Regulations, and/or the tenancy agreement in any way. Their claim is dismissed on this basis alone. The Tenants have an obligation to quantify their claim. I would further find that the Tenants have failed to do so and made submissions with respect to what they were seeking that were not causally connected with any of the purported breach by the Landlord. The Tenants' claim is dismissed without leave to reapply.

I note that the issue of the enforceability of the Eviction Letter is not before me as the tenancy is over. However, it is clear on its face that the Eviction Letter is not in the approved form as required under s. 52 of the *Act*. Therefore, it is not a proper notice as required by s. 49(4) of the *Act*. I provide this context because the practical effect of this would have been that the Eviction Letter was unenforceable. In other words, the Tenants voluntarily vacated the rental unit when they were under no obligation to do so. In any event, a notice to end tenancy that is not in compliance with s. 52 of the *Act* does not give rise to a claim for monetary compensation, particularly when a tenant chooses to vacate the rental unit when they are under no obligation to do so. The extent to which the Tenants have incurred financial costs from moving, this was self-imposed by virtue of the fact that they vacated the rental unit voluntarily.

I would further note that there does not appear to be any issue with respect to compensation payable under s. 51(1) of the *Act*. The Landlord stated and I accept that she paid the Tenants one month's rent at the end of the tenancy. The Tenants did not dispute this. Finally, the Landlord's payment of this amount appears to have been voluntary on the part of the Landlord as the Eviction Letter was not proper notice under s. 49, thus the compensation under s. 51 was not triggered.

Conclusion

The Tenants claim for compensation under s. 67 is dismissed without leave to reapply.

As the Tenants were unsuccessful in their application, I find they are not entitled to the return of their filing fee. Their claim under s. 72 of the *Act* 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: June 14, 2022

Residential Tenancy Branch