



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Counsel for the landlord's estate represented the landlord in this hearing. The appointed executor for the landlord's will was also present. The estate representative advised that the landlord named in this application passed away in March 2022.

Issues

Are the tenants entitled to monetary compensation as claimed including recovery of their filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The rental unit was a two bedroom walk out basement suite. The landlord resided in the upper portion of the home and the laundry room was shared. The tenancy began on March 1, 2020, and ended on August 31, 2021. The monthly rent was \$1500.00 per month. The tenants paid a security deposit and pet deposit of \$750.00 each at the start of the tenancy which has since been returned in full by the landlord.

The tenants are claiming \$10,000 which they describe in their application as follows:

Illegal Eviction -Illegal rent increase -Restricting laundry services and storage without revising lease agreement-Breach of quiet enjoyment - Constant and excessive text messages regarding non important things (dogs barking, parking, tv volume- all during the day) -Constant and unnecessary requests via text messages -Verbal abuse/name calling - Entering our bedroom when not given permission -Touching and moving our personal belongings without permission

In support of the above the tenants submitted copies of various text message correspondence between the parties throughout the tenancy as well as some letter correspondence exchanged between the parties prior to the end of the tenancy.

The tenants are claiming they were illegally evicted as the landlord did not serve them with proper notice as required but rather the landlord bullied them out with threats to contact the RCMP if they did not vacate. The tenants stated they were advised by a lawyer that they were entitled to compensation equivalent to 12 months rent as the landlord illegally evicted them and then re-rented the suite. The tenants submit they only claimed half of 12 months rent as they thought that was fair.

The tenants also appear to be claiming \$1500.00 for re-imbursement of August 2021 rent although they made no separate submissions on this during the hearing.

The representative for the landlord's estate responded to the tenants claim as follows:

- The tenancy was ended by consent as a result of mutual resentment and disagreements between the parties.
- There was no enforceable end of tenancy notice issued by the landlord.
- The landlord issued a letter only on August 9, 2021, stating the tenants were required to vacate the unit by the end of the month.
- In response to the above letter, the tenants advised the landlord that the eviction was not legal.

- The landlord took no other action in regards to an eviction after this.
- Knowing the landlord's letter was not legal the tenants on their own accord vacated at the end of the month.
- The tenants wrote a letter to the landlord on August 18, 2021 stating they are moving out and "we don't want to be here as much as you don't want us here".
- The parties had a good relationship for majority of the tenancy until an issue where the landlord was upset over garbage outside the unit.
- Following which the tenants sent the landlord a list of grievances and both accused each other of being nasty.
- The landlord never threatened to call the RCMP if the tenants did not vacate.
- There was no restriction of laundry services rather the landlord was implementing a laundry schedule due to plumbing issues with the septic.
- There was no breach of quiet enjoyment and in the alternative the tenants have not demonstrated how they have suffered any actual damages or losses.
- The tenants had full possession of the unit until August 31, 2021 so they are not entitled to reimbursement of rent for this month.
- After receiving advice from the Residential Tenancy Branch in regards to rent increases, the landlord returned all rent overpayments in full to the tenants.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving a notice to end tenancy. Section 49(7) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) **be signed** and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Further, Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

I find that the August 9, 2021, letter issued by the landlord requiring the tenants to vacate does not meet the form and content requirements of Section 52 of the Act; therefore, it was not a valid notice to end tenancy as per section 49 of the Act. I find that the 12 times monthly rent penalty provisions under section 51(2) of the Act only apply in cases where a tenant receives a Notice to End Tenancy under section 49 of the Act which is in compliance with the form and content provisions of section 52.

Further, I find that the tenants were aware that the letter was not a valid notice under the Act and knowing that they still vacated the rental unit on their own accord. Although the parties did exchange some unpleasanties via text and/or by letter, I find these do not constitute bullying to the extent that the tenants had no choice but to vacate the unit. I also find that there was no evidence that the landlord threatened the tenants if they did not vacate.

I find that the tenants had possession of the unit until August 31, 2021; therefore, they are not entitled to any rent reimbursement for this month.

The tenants claim for compensation for an illegal eviction and rent re-imbursement are dismissed without leave to reapply.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenants have failed to establish that there was a substantial interference with their lawful enjoyment of the rental premises. Further, even if I were to find there was a substantial breach, which I do not, I find the tenants have not established that any actual damage or loss exists or any particulars for how they have arrived at a claim of \$10,000.00. Rather the tenants just submitted a lump sum claim which included the above claim for an illegal eviction. The tenants claimed laundry services were restricted but again provided no details to support the duration for which this allegedly occurred or any particulars for losses claimed as a result.

The tenants claims for loss due to breach of quiet enjoyment and restriction of services are also dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: July 11, 2022

Residential Tenancy Branch