



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

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

- An order for compensation under s. 51 because the landlord ended the tenancy pursuant to s. 49 and has not fulfilled the stated purpose in the notice to end tenancy;
- A monetary order under s. 67 for compensation loss or other money owed; and
- Return of their filing fee pursuant to s. 72.

X.N. and Y.H. appeared as the Applicants. J.F. and D.D. appeared as the Respondents.

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 parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Applicants entitled to compensation under s. 51 equivalent to 12 times monthly rent payable under the tenancy agreement?
- 2) Are the Applicants entitled to monetary compensation?
- 3) Are the Applicants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Applicants advise that they signed a tenancy agreement on November 6, 2021. A copy of the tenancy agreement was put into evidence. The tenancy agreement shows that the Respondent J.F. is listed as the sole Landlord.

The tenancy agreement sets out, among other things, the following terms:

- The Applicants were to take occupancy of the rental unit on December 31, 2021.
- The tenancy was for a fixed term ending on May 1, 2022.
- Rent of \$1,495.00 was to be paid on the first of every month.
- The security deposit under the tenancy agreement was to be paid in the amount of \$747.50.

The Applicants testified that they paid the Respondents the deposit of \$747.50 to secure the rental. The Applicants evidence includes a screenshot of an e-transfer showing that this amount had been sent to the Respondent J.F. on November 5, 2021.

I was advised by the Respondent D.D. that he and J.F. are in the midst of a separation. The Respondent D.D. indicates that the date of separation as per documents he received from her lawyer is stated being in July 2021. The Respondent J.F. advised that she vacated the subject residential property on November 9, 2022. The Respondent D.D. did not deny this was the date J.F. moved out of the property.

On December 26, 2021, the Applicants testified that they corresponded with the Respondent J.F. and D.D.. The Applicants indicate that D.D. told them on December 26, 2021 that the rental unit had been pre-booked by someone else and that they would not be able to take possession on December 31, 2021 as per the tenancy agreement. The Tenants evidence includes copies of the text message exchange with the Respondents on December 26, 2021.

The Applicants testify that they were moving to the community in question for a short-term internship and were left with little time to find alternate accommodation. The Applicants advised that they found alternate housing but that the alternative was more

costly, stating that rent was paid in the amount of \$2,323.89 for the months of January, February, and March 2022 and that rent of \$2,098.99 was paid in April 2022. The Applicants evidence includes receipts of the rent payments. The Applicants seek compensation for the added cost of their monthly rent.

The Applicants confirmed they were not served with a notice to end tenancy as they never took possession of the rental unit.

The Respondent J.F. does not deny signing the tenancy agreement nor does she deny that the Applicants are likely entitled to compensation. She indicated at the hearing that the subject property had a basement suite which she had managed prior to separation. She further testified that she would sign tenancy agreements listing herself as the sole landlord. She says that prior to signing the tenancy agreement, she advised the Respondent D.D. about the four-month fixed-term tenancy. The Respondent J.F. confirmed that she was on title as owner for the property when the tenancy agreement was signed. She says that she is still on title for the property.

The Respondent D.D. denies knowing anything about the tenancy agreement until being notified in late December 2021 and denies that the Respondent J.F. communicated to him about it in November 2021. The Respondent D.D. testified that many of the recent short-term tenants are individuals he has become acquainted with through work. He says that a tenancy agreement was signed on October 2, 2021 for the rental unit during the relevant period. He says one individual rented the basement up until February 2022 and the next occupied the space from February to June 2022. He further argued that he should not be responsible as J.F. is listed within the tenancy agreement.

The Applicants written submissions confirm that J.F. returned the security deposit of \$747.50 to them on December 30, 2021. Their evidence includes correspondence with J.F. respecting the return of the security deposit.

Analysis

The Applicants seek compensation under ss. 51 and 67 of the *Act*.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end

tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The Applicants admit they never received a notice to end tenancy, nor was one put into evidence. The wording of s. 51 is clear that it relates to compensation when a notice to end tenancy is issued under s. 49. As no notice to end tenancy was issued under s. 49, I find that the Tenants are not entitled to a claim for compensation under s. 51. It appears that this claim was improperly pled by the Applicants.

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 primary question is whether there is a tenancy between the parties. A tenancy agreement is a contract. As a general rule, contracts come into existence when there is said to be a "meeting of the minds", which is to say when an offer is made and accepted. This common law principle is reflected in s. 16 of the *Act*, which states the following:

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In other words, the fact that the Applicants never took possession of the rental unit is not relevant to the analysis. On its face, the tenancy agreement provides clear evidence

that a tenancy came into existence on November 6, 2021 when the Applicants and J.F. signed the tenancy agreement.

There is a related issue on whether J.F. had the capacity or authority to bind D.D. in the tenancy agreement, particularly in light of their impending separation. Looking at the s. 1 of the *Act*, landlord is defined as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find that J.F. was permitted to grant occupation of the rental unit when the tenancy agreement was signed. There is no dispute that J.F. is an owner of the property. She was still residing within the property when the tenancy agreement was signed, moving out on November 9, 2021. J.F. indicates that she managed the rentals during her relationship with D.D., which included signing tenancy agreements with her name only. This was not directly disputed by D.D. at the hearing. All of these factors confirm that J.F. was permitted to grant occupation of the rental unit when the tenancy agreement was signed on November 6, 2021.

The Respondent D.D. says he was not advised of the tenancy as was alleged by J.F. at the hearing. I find this argument to be irrelevant as it appears that their past practice was for J.F. to manage the rental unit. Similarly, whether a tenancy agreement was signed with another individual on October 2, 2021, as alleged by D.D., is not relevant. The Applicants signed a contract with the owner of the property. They had no reason to doubt that they were entering into a landlord-tenant relationship. They are innocent victims to the inability of J.F. and D.D. to effectively communicate with one another.

D.D. and J.F. co-own the residential property, they are both jointly and severally liable for damages resulting from breaching the tenancy agreement. I find that they are both Landlords and the Applicants are properly Tenants as per the tenancy agreement.

By failing to grant possession of the rental unit to the Tenants on December 31, 2021 as per the tenancy agreement, I find that the Landlords breached the tenancy agreement. I further find that the Landlords failure to grant possession of the rental unit caused added rental costs for the Tenants. The Tenants provide clear evidence that they paid rent above that set out in the tenancy agreement, which would not have happened had they been permitted to occupy the rental unit. I find that the Tenants could not have mitigated their damages as they only had five days to find alternate accommodations.

I find that the Tenants have established a monetary claim in the following amount:

| Month | Rent as per the tenancy agreement | Rent paid by the Tenants | Difference |
|---------------|-----------------------------------|--------------------------|------------|
| January 2022 | \$1,495.00 | \$2,323.89 | \$828.89 |
| February 2022 | \$1,495.00 | \$2,323.89 | \$828.89 |
| March 2022 | \$1,495.00 | \$2,323.89 | \$828.89 |
| April 2022 | \$1,495.00 | \$2,098.99 | \$603.99 |
| TOTAL | | | \$3,090.66 |

I find that the Tenants have made out their monetary claim in the amount of \$3,090.66.

Conclusion

The Tenants have made out a monetary claim of \$3,090.66 against the Landlords.

The Tenants admit they did not receive a notice to end tenancy issued under s. 49 of the *Act*. As no s. 49 notice to end tenancy was issued, the Tenants are not entitled to compensation under s. 51. Their claim under s. 51 of the *Act* is dismissed without leave to reapply.

I find that the Tenants were successful in their application. Pursuant to s. 72(1) of the *Act*, I order that the Landlords pay the Tenants' \$100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Landlords pay **\$3,190.66** to the Tenants.

It is the Tenants obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenants with 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: August 15, 2022

Residential Tenancy Branch