



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 an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) for compensation relating to a Two Month Notice for Landlord’s Use of Property (the “2 Month Notice”), for other monetary loss or money owed and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord indicated they did not receive any evidence from the tenants. I explained to the landlord the documents filed by the tenants, which were emails. The landlord stated that they are willing to proceed with the evidence submitted by the tenants.

Preliminary and procedural matters

The parties were at a hearing on December 23, 2021, and the tenant’s application to cancel the 2 Month Notice to End Tenancy was heard. On January 7, 2022, the Arbitrator made a final decision that the 2 Month Notice was valid, and the tenants’ application was dismissed, this included the filing fee.

The Arbitrator determined that the landlord was entitled to an order of possession effective December 31, 2022; however, as the tenants vacated the premises on December 15, 2022, the order of possession was moot. A copy of the decision was filed in evidence.

On August 29, 2022, the tenants filed a monetary worksheet. The tenants are seeking to recover prorated rent, and two filing fees. One of the filing fees was related to the previous hearing which was already dismissed. I will not consider the filing fee that is related to the previous hearing. Further, the tenants were unsuccessful with their application and would not have been entitled to the recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation under the Act?

Background and Evidence

The tenancy began on August 1, 2020. Rent in the amount of \$2,400.00 was payable on the first of each month.

The tenant testified that they should be entitled to the return of prorated rent from December 16 to December 31, 2021, because they gave the landlord 10-days notice that they would vacate the rental unit on December 15, 2021, as permitted by the Act as they had received the 2 Month Notice.

The landlord testified that the tenants did vacate on December 15, 2021; however, they refused to cancel their application to cancel the 2 Month Notice and they attended the hearing on December 23, 2021. At the hearing, the tenants insisted that the merits of their application should be heard. The landlord stated that because of the tenants' action the tenancy was still in questioned and put them in a bad position because if the Arbitrator determined that the 2 Month Notice should be cancelled the tenants' tenancy would continue and they would have been seriously impacted as it was related to the sale of the premises.

The tenant testified that they did not cancel their application for dispute resolution to cancel the 2 Month Notice because they wanted to recover their filing fee. So, they had no other option except to have the hearing proceed. I note that is not what was recorded in the final decision.

The tenant testified that they had no intentions of moving back into the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenants received the 2 Month Notice, and they filed an Application for Dispute resolution seeking that the 2 Month Notice be cancelled and have the tenancy continue. That was the tenant's rights under the Act and the 2 Month Notice had no force or effect until the merits of the tenants' application was heard.

However, during this time, the tenants then exercised their rights under the Act, to end the tenancy early on December 15, 2021; however, refused to cancel their Application for Dispute Resolution to cancel the 2 Month Notice. The merits of the tenants' application was heard on December 23, 2021..

The tenants withheld December 2021 rent, as permitted by the Act as that was their compensation for receiving the 2 Month Notice. However, the tenants had not accepted the 2 Month Notice and the validity of the 2 Month Notice had not yet been determined as their application was still in dispute and a final decision was not made until January 7, 2022. The Arbitrator determined that the 2 Month Notice was valid and found that the landlord would be entitled to an order of possession effective December 31, 2021.

The tenants are now seeking to recover prorated rent for the time period of December 16, to December 31, 2021. However, as the Arbitrator had not determined the validity of the 2 Month Notice and the only options the Arbitrator had was to either cancel the 2 Month Notice which would mean the 2 Month Notice had no force or effect and the tenancy was to continue until legally ended or find the 2 Month Notice valid and end the tenancy.

I find the tenants actions unreasonable by using the Act, in a way it was not intended. You cannot request the 2 Month Notice to be cancelled and have the tenancy continue and then use the provisions of the Act that are only intended if the tenants accepted the 2 Month Notice and plans to move-out before the effective date of the 2 Month Notice.. The Act is not intended for the tenants to exercise this right, while the issue of the 2 Month Notice is in dispute as the Two Month Notice has no force or effect until a decision is made.

The merits of the 2 Month Notice were heard on December 23, 2021; However, on January 7, 2022, the Arbitrator determined the 2 Month Notice was valid and that the landlord was entitled to an order of possession on December 31, 2021, the effective

date of the 2 Month Notice. The order of possession was not issued because the issue was moot as the tenants vacated on December 15, 2021.

In this case, the tenants did not pay rent for December 2021. I find rent was deemed to have been paid for receiving the 2 Month Notice and this was the tenant's compensation under the Act. However, I find the tenants action of not cancelling the hearing of December 23, 2021, and insisting that the hearing proceed on the merits even after they had vacated, is an abuse of process and is unfair and unreasonable to the landlord.

Further, the Arbitrator on January 7, 2022, determined that the landlord would have been entitled to an order of possession on December 31, 2021. Therefore, I find the tenants are not entitled to the return of prorated rent as a final decision was not made until January 7, 2022 .

The tenants' application is claiming the cost of movers and lost wages. The tenant presented no testimony on this issue. Further, a tenant is not entitled to moving cost or lost wages when the tenancy legally ended. Therefore, I dismiss the tenants' claim for compensation without leave to reapply.

Based on the above, I dismiss the tenants' entire application without leave to reapply. The tenants are not entitled to recover the cost of the filing fee.

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: September 7, 2022

Residential Tenancy Branch