



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT
 OPL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants (the Tenants' Application) under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice);
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution filed by the Landlord (the Landlord's Application) under the Act, seeking:

- Enforcement of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call 11:00 AM (Pacific Time) on September 23, 2022, and was attended by the Tenants and an agent for the Landlord G.C. (the Agent), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were

also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

At the outside of the hearing the Tenants stated that the tenancy ended when they vacated the rental unit between approximately July 15, 2022 - July 17, 2022. The Agent agreed that the tenancy has ended, and that the Landlord has possession of the rental unit. As the parties agreed that the tenancy ended prior to the date of this hearing, and that the Landlord has possession of the rental unit, I find that the matters relating to any notices to end tenancy and possession of the rental unit, have already been resolved. As a result, I dismiss the Tenants' claim seeking cancellation of the One Month Notice, and the Landlords entire Application seeking enforcement of the Two Month Notice and recovery of the filing fee, without leave to reapply.

As the Agent acknowledged service of the Tenants' Notice of Dispute Resolution Proceeding (NODRP), the hearing therefore preceded on the basis only of the Tenants' claims for compensation for monetary loss or other money owed, and recovery of the filing fee.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor, will be e-mailed to them at the e-mail addresses provided in the Applications.

Preliminary Matters

Preliminary Matter #1

The parties disputed whether the documentary evidence before me from the other party was properly served on them in accordance with the Act and the Rules of Procedure. Although the Tenants stated that they sent the documentary evidence before me to the Landlord's spouse by e-mail on May 30, 2022, and that they received a response to this e-mail from the Landlord or the Landlord spouse, the Agent stated that the Landlord Received only the NODRP and three photographs from the Tenants in relation to the Tenants' Application. The Agent described the photographs as a picture of a lawn with a paint roller on it, a picture of a truck, and a picture of a floor. The Tenants provided no

documentary evidence to substantiate their claims that all of the documentary evidence before me was served on the Landlord, and the agent provided affirmed testimony that the landlord received only the NODRP, and the three photographs described above. As a result, and pursuant to rules 3.5 of the Rules of Procedure, I therefore exclude the documentary evidence before me from the Tenants, with the exception of the above noted three photographs, from consideration as I am not satisfied by the Tenants that this documentary evidence was served on the Landlord as required by the Act and the Rules of Procedure. I therefore find that it would be administratively unfair and significantly prejudicial to the Landlord to accept it for consideration.

Although the Agent stated that the documentary evidence before me from the Landlord was sent to the Tenants by registered mail on August 29, 2022, and provided me with copies of the registered mail receipts and tracking slips, the Agent acknowledged that the registered mail was sent to the rental unit address after the Landlord was already aware that the Tenants had vacated, and the Tenants denied receipt. I therefore find that the Agent has failed to satisfy me, as required by rule 3.16 of the Rules of Procedure, that the Tenants were served with the documentary evidence before me as required by the Act and the Rules of Procedure, and I find that it would be administratively unfair to the Tenants to accept it for consideration.

Preliminary Matter #2

Although the Tenants submitted documentary evidence related to monetary claims other than those listed in the Application, rule 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. I advised the Tenants that submitting documentary evidence does not constitute filing a claim or an Amendment to an Application for Dispute Resolution. Although rule 4.2 of the Rules of Procedure allows an arbitrator to amend an application at the hearing in circumstances that can reasonably be anticipated by the other party, I declined to amend the application at the hearing as I did not find it reasonable to do so given the nature of the subsequent claims and the fact that I have already found that the Tenants did not properly serve the Landlord with the majority of the documentary evidence before me from the Tenants. I therefore advised the parties that the hearing would proceed based only on the monetary claims explicitly named in the Application, and that the Tenants were welcome to file a subsequent application seeking additional monetary claims for other matters, should they wish to do so.

Preliminary Matter #3

I permitted a brief recess between approximately 12:03 - 12:06 PM. No evidence or testimony was accepted from either party during this time.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to recovery of the filing?

Background and Evidence

Although a copy of the original tenancy agreement between the Tenants and the previous owner/landlord was not before me for consideration, the parties were agreed that a tenancy was in place between one or both of the Tenants and the previous owner of the property at the time the property was sold by the previous owner/landlord to the current owner/landlord, who is named as the respondent in the Tenants Application.

The Tenants stated that shortly after taking over the property in May of 2022, the Landlord immediately began seeking to end their tenancy in ways that the Tenants believe were improper and amoral. Although the Tenants stated that they were served first with a mutual agreement to end tenancy in one month, which they refused to sign, then a new fixed term tenancy agreement with a vacate clause for family use for July 31, 2022, which they ultimately signed, and then a Two Month Notice to End Tenancy for Landlord's Use, ultimately they believe that the Landlords were simply seeking to end their tenancy in any way possible because they did not like the Tenants' dog and they did not like that the Tenants smoked, not because the rental unit was required for the Landlord's family. Although the Tenants ultimately vacated the rental unit in July of 2022, they sought compensation in the amount of one month's rent (\$1,500.00), for the stress and inconvenience of having to deal with what they described as the Landlord's repeated and unlawful attempts to end their tenancy.

The Agent stated that the Two Month Notice was served in good faith as the elderly parents of the Landlord or the Landlord's spouse needed to reside in the rental unit. The Agent stated that the parents of the Landlord or their spouse moved into the rental unit, where they currently reside, and where they will continue to reside. The Agent stated that there was no ill will towards the Tenants with regards to service of the Two Month

Notice, the tenancy agreement(s), or the mutual agreement(s) to end tenancy, all of which were related to the Landlord's need to regain possession of the rental unit for use by their close family member, despite the Tenants' claimed to the contrary, and as the Landlord has done nothing wrong, no compensation is owed to the Tenants.

The Tenants also sought \$80.49, which they state represents the cost of one month of internet, as they stated that their original tenancy agreement with the previous owner/landlord had internet included in the cost of rent, and that their internet was disconnected by the new Landlord in May of 2022, when they took possession and moved in upstairs. The Tenants stated that they went without internet between approximately May 15, 2022 - June 12, 2022, when they set up their own internet at a monthly cost of \$80.49 after tax. The Tenants stated that between the date they lost internet connection and the date their new internet was set up, they used data from their cell phones. The Tenant T.M.B. stated that they incurred approximately \$20.00 in additional data charges during that period, as they work from home using the internet. Given that T.M.B. works from home using the internet, the Tenants also argued that the Landlords disconnection of their internet was a substantial hardship for T.M.B.

In response the Agent stated that internet was not included in the cost of rent under the tenancy agreement that the Landlord signed with the Tenants, and that a tenancy agreement was never provided to them by either the previous owner/landlord or the Tenants. As a result, the Agent stated that the Landlord has never had any evidence that internet was included in the cost of rent under the previous tenancy agreement. The Tenant E.F. acknowledged that they never provided a copy of their previous tenancy agreement to the Landlord, stating that they had lost or misplaced it. The Tenants also acknowledged that they were provided with a rent reduction in the amount of approximately \$50.00 per month by the new Landlord, due to a lack of internet.

Analysis

Section 7 of the Act states that if a landlord tenant does not comply with the act, the regulations, or their tenancy agreement, the noncomplying party must compensate the other for damage or loss that results. Section 44 of the Act set out the ways in which a tendency may end.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that was incumbent upon the

Tenants to satisfy me, on a balance of probabilities, of their claims. Where both parties provide affirmed testimony contradictory to each other, which is the case here, I find that I must turn to the documentary and other evidence before me from the parties, and in particular the party with the burden of proof, to resolve this conflict. Although the Tenants argued that the Landlord repeatedly attempted to end their tenancy unlawfully, the Agent denied these claims, and I find that there is no documentary or other evidence before me from the Tenants that would establish to my satisfaction on a balance of probabilities, that these allegations are accurate. I therefore dismiss the Tenants' claim for monetary compensation in the amount of \$1,500.00, without leave to reapply. Having made this finding, I will now turn to the matter of utilities.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the Tenants use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. It also states that a landlord may terminate or restricted service or facility other than one referred to above, if the landlord gives 30 days written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Although the Tenants argued that internet was included in the cost of rent under their original tenancy agreement, a copy of this tenancy agreement was not provided for my review and consideration, and at the hearing the Agent stated that the Landlord also was never provided with a copy of that tenancy agreement by either the Tenants or the previous owner/landlord. As a result of the above, I find that the Tenants have failed to satisfy me on a balance of probabilities that internet was even a service to be provided to the Tenants by the Landlord under the tenancy agreement that was in effect at the time the Respondent/Landlord took over this tenancy, let alone that it was included in the cost of rent. As a result, I find that section 27 of the Act does not apply with regards to the provision of internet during this tenancy, and I therefore dismiss the Tenants' claim for reimbursement of \$80.94 in internet costs, without leave to reapply. As the Tenants were not successful in their application, I declined to award them recovery of the filing fee.

Conclusion

The Applications of both parties are dismissed in their entire 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: September 23, 2022

Residential Tenancy Branch