



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNRT MNDCT MNETC MNSD FFT

Introduction

The tenants seek compensation under sections 38, 51, 67, and 72 of the *Residential Tenancy Act* (the “Act”).

Issue

Are the tenants entitled to compensation?

Background and Evidence

To be successful in an application for compensation under the Act, applicants must prove their case on a balance of probabilities. While I have considered all of the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

1. History of the tenancy

The tenancy began in October 2020 when the landlord purchased the property. The tenants had a previous tenancy dating back to 2018. On June 10, 2021 the landlord issued a *Two Month Notice to End Tenancy for Landlord’s Use of Property* (the “Notice”) and the tenants disputed the Notice. In a decision dated October 26, 2021, the arbitrator outlined a settlement that was entered into. The first term of the settlement agreement was that the landlord agreed to cancel the Notice. It should be noted that the arbitrator cancelled the Notice, though erroneously referred to it as a One Month Notice to End Tenancy for Cause; there is no such notice to end tenancy in the file. The second term of the settlement agreement was that the tenants were to vacate the rental unit on November 30, 2021. (See related file number as referenced on the cover page of this Decision.)

The tenants vacated the property on November 30, 2021. On May 20, 2022 the tenants filed an application for dispute resolution seeking compensation for various matters.

2. Claim for cost of emergency repairs

The tenants seek \$528.67 in compensation to pay the cost of hiring a plumber to deal with a plumbing problem during the tenancy. They testified under oath that there was a back-up of the water and sewer and that despite repeated requests from the landlord to get in a plumber, the landlord ignored their requests. The tenants hired a plumber who fixed the problem. This service call-out for the plumber cost them the amount claimed. Various copies of text messages were provided into evidence.

The landlord disputes this claim. She testified under oath that she *did* respond to the tenants' requests for assistance. However, she argued that the evidence (i.e., a plumber's report) proves that the tenants caused the back-up. Wet wipes were found to have been the culprit causing the clog and the backup. The landlord argued that she ought not be liable for expenses related to the tenants' negligence. She provided a letter to the tenants asserting her position on this matter. Documentary evidence pertaining to the plumbing problem was submitted into evidence by both parties.

3. Claim for moving costs

The tenants seek \$336.59 in compensation for moving costs. They submit that they had to vacate the property due to the landlord's bad faith and wrongful eviction. As a result of a short period to move they borrowed friends' help, a flatbed truck, and rented a U-Haul which cost them the amount claimed.

The landlord disputes this claim because, as argued in her written submission, the vacancy was ended by way of settlement agreement. The Notice had been cancelled and the tenants vacated in compliance with the settlement agreement. The landlord argued that she should therefore not be liable for moving costs.

4. Claim for compensation under section 51(2)

The tenants seek \$15,600.00 under section 51(2) of the Act. This section permits a tenant to seek compensation in the amount of twelve times the monthly rent when a landlord does not fulfil the reason for ending a tenancy stated in a notice to end a tenancy issued under section 49 of the Act.

The tenants argued that the landlord did not reside in the property for the minimum six month period as required by the Act. They referred to various documents, such as a real estate property listing, in support of their claim.

The landlord disputes this claim because, for the reason similarly argued with respect to the claim for moving expenses, the vacancy was ended by way of the settlement agreement. The Notice had been cancelled and the tenants vacated in compliance with the settlement agreement as set out in the previous decision. As such, she submitted that, because the Notice was cancelled, she is not bound by the requirements set out under the Act regarding required six-months' occupation of the rental unit.

5. Claim for security deposit

The tenants seek the return of their \$650.00 security deposit. They testified that at no time did they authorize in writing for the landlord to retain the security deposit. Nor, to the best of their knowledge, did the landlord file an application for dispute resolution claiming against the deposit.

The landlord disputed this claim because, in her words, the tenants left the property in a complete mess. The mess included empty pizza boxes and pizza crust. All told, the landlord estimates that the cost to clean up the rental unit well exceeds \$3,000. She further noted that the tenants did not provide her with any forwarding address, nor did they participate in the move out condition inspection.

6. Claim for cost of application filing fee

The tenants confirmed they seek to recover the \$100.00 application filing fee should they be successful in this application.

Analysis

As noted previously, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for cost of emergency repairs

The blocked water pipe falls under section 33(1) of the Act regarding what constitutes "emergency repairs." A claim to be reimbursed for amounts paid for emergency repairs may be made under the Act. However, a claim for reimbursement may not be made when the emergency repairs are for damage caused primarily by the actions or neglect of the tenant (see subsection 33(6) of the Act).

In this dispute, the landlord referred to her evidence which includes a plumber's report. And in that report the cause for the blockage was due to the presence of wet wipes.

Having considered this evidence and considering that the tenants did not dispute the presence of wet wipes as documented in the report, it is my finding that the blockage was caused primarily by the neglect or negligence of the tenants. For this reason, I decline to award compensation for the cost of emergency repairs.

2. Claims for moving costs and for compensation under section 51(2)

These claims may be considered together, as they relate to the circumstances of how the tenancy ended.

The tenancy was ended by way of a settlement agreement made by *both* parties. The settlement agreement, which was voluntarily entered into and agreed upon by the tenants, included the provision that the tenants would vacate the rental unit on November 30, 2021. That the tenants agreed to vacate the rental unit, and put that agreement into a settlement agreement, cannot then give rise to a claim for compensation resulting therefrom. In other words, the tenants agreed to move out by a certain date and were aware of this move out date on or about October 26, 2021 when the decision was issued. The tenants have not proven any breach of the Act by the landlord from which compensation may flow. Accordingly, the claim for moving costs is dismissed.

Regarding the claim for compensation under section 51(2) of the Act, this type of claim may only be made when a landlord does not carry out the reasons given in a notice to end tenancy issued under section 49 of the Act. However, the Notice was cancelled and therefore of no legal force or effect. Therefore, given that the Notice was of no legal force or effect after October 26, 2021, the landlord was under no further legal obligations under the Act to occupy the rental unit for a period of six months. Accordingly, no claim for compensation may be made under section 51(2) of the Act because, in simple terms, there was no longer any notice to end tenancy.

3. Claim for security deposit

In respect of this aspect of the tenants' claim, there is no evidence before me that the tenants ever gave the landlord a forwarding address in writing within one year after the end of the tenancy. Granted, there is a text message conversation between the parties in which one of the tenants asks for the return, but there is no additional information.

Despite any other provision in the Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, (a) the landlord may keep the security deposit, and (b) the right of the tenant to the return of the security deposit is extinguished (see section 39 of the Act).

For the reasons set out above I find that the tenants are not entitled to the return of, or entitled to compensation for, their security deposit, and this claim is dismissed.

4. Claim for cost of application filing fee

Because the tenants have not proven any of the claims made in the application, they are not entitled to recover the cost of the application filing fee. This claim is dismissed.

Conclusion

The application is hereby dismissed without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 2, 2023

Residential Tenancy Branch