



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$26,000.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property; and to recover their \$100.00 Application filing fee.

The Tenants, G.M. and M.M., and the Landlords, I.D. and S.D. appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlords with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on July 22, 2022. The Tenants provided Canada Post tracking numbers as evidence of service. The Landlord said that they did not receive any documents from the Tenants for this proceeding.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, given the Landlords' registered mail evidence, I find the Tenants served the Notice of Hearing to the Landlords on July 27, 2022.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the

Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy was to begin on July 1, 2022, with a monthly rent of \$2,200.00, due on the first day of each month. The Parties agreed that the Tenants did not pay the Landlords a security or pet damage deposit. The Parties agreed that the Tenants paid \$200.00 toward a strata fee, and they also paid to have a criminal record check. However, the Parties agreed that the Landlords refunded the Tenants for these fees, because the tenancy did not proceed.

When I asked the Tenants to explain their Application and how they calculated the amount claimed, they said the following:

The amount calculated is a year's rent. We have asked for this because of the extreme cause of undue stress and anxiety in a horrible rental market. We had gone above and beyond to offer them help, such as connection to our last landlords to help them as first time landlords. We had sold furniture that wouldn't fit, so we had to repurchase it. I have had anxiety and panic attacks. We are not where we want to live. We're behind a fire station. It's very stressful. We were forthcoming, honest, and used the previous landlord for references. We are good people. We decided a year's rent to recover and find a new place was fair.

The Landlord responded:

I have a copy of our back and forth messages via [social media platform]. On June 30 - that night they were supposed to take possession on July 1. We were cleaning some things and had decided for them to come that night to inspect. I forgot to print the home inspection, but we had enough time to go over it.

The Tenants provided copies of social media message communications between the Parties starting on May 17, 2022, and ending on June 30, 2022 as documentary evidence.

The Landlord then read some of the messages back and forth, focusing on one by the Tenants, which said:

Hi [Landlords],

I'll be honest with you – we're feeling anxious and uncomfortable about renting from you and about the state of the condo. We've been communicating about this rental since May and, though we are supposed to have the place fully to ourselves in a few hours, the place is absolutely not ready. The missing paperwork also makes us feel like you guys are not ready, either.

We have been thorough, fast to respond, forthcoming with information and adaptable to your changing schedule. We have gone above and beyond throughout this process. We are not comfortable moving in tomorrow in the condo's current state.

It's an expectation when moving into a new place that it is clean and clear of the previous tenant's belongings. When discussing our tenancy, you assured us that things would be painted, cleaned, fixed up, carpets shampooed, etc. and that has not been done. This is our thought process:

- We meet tomorrow morning. You bring back the first rent cheque and give it to us.
- We write you a new cheque postdated to July 9 with three weeks' rent plus deposit (\$2750).
- You arrange for a professional cleaner and painter this week to have the place ready before July 9 at 8:00 AM.
- On July 9 at 8:00 AM, we do the inspection together and complete a new agreement with new move-in date so long as everything is good to go. We have the elevators booked on this day at both apartments.

This cuts our move time in half and is absolutely not ideal but it's our last ditch effort to make this work; if you're not to prepare the condo accordingly, we will have to make the difficult choice to pull out of this rental.

If that is the case, we will meet you tomorrow to give you back the key/fob,

destroy the contract together, etc.

I get that this isn't a comfortable conversation but we have said from the beginning that we will be honest about everything and will continue to be. Let us know your thoughts.

The [Tenants]

The Landlord's responded, as follows:

Hi [Tenants]

We regret that your expectations have not been met. With that said, we agree that we will have to cancel the contract together as per your message. We'll give you back all the cheques that you have issued and in exchange return to us the keys and the fob.

Please meet us at [name and address of restaurant chain].

In the hearing, the Landlords said:

There was nothing we put in writing or in the agreement saying that things would be painted. The tenancy agreement said in addendum #13, that should Tenants want to paint, they must first seek permission from Landlord . When we were talking about painting, she talked about wall paper, which is fine. She had also said about having the carpets shampooed. There was nothing in the agreement or verbally or in writing that said we would shampoo the carpets. But we vacuumed and cleaned, but not as per their standard to be shampooed.

In the hearing, the Tenants said:

To talk about the experience from our perspective, we began conversations with them on May 17 when they posted the condo for rent. They had from then to July 1 to shampoo a carpet. They admitted they didn't do that. There are messages, comments where they are saying we have to fix this - the house is a mess. They said they had to do all of these things. It's just common courtesy to make sure the rental unit is ready.

They changed meeting times multiple times. The place still had furniture, she

said someone was going to buy it, but it fell through. There was dirt in the middle of the room. It was not in writing, but we verbally discussed [shampooing the carpet], and it is standard when moving to a new place. They lied about it being shampooed. The place was not ready and they had ample time.

We had put pressure on them to get the tenancy agreement ready and they waited. We pleaded to get that done to secure the place. There were very few rentals in [the City] where we wanted to live. On the day that we came in, you heard the message, I was very cordial. We provided them with courtesy up to the end. They are claiming they ripped up a rental agreement on July 2nd, but that document was never provided – they apologized for forgetting the paper work over and over again. We both signed it, they said they would scan this and give us a copy, but they never did. They showed us the strata documents, but no tenancy agreement, nor any paper work to end the tenancy. If you were facing homelessness, you would not want to go into a [restaurant chain] with the people who were making us homeless.

I asked the Tenants if they considered moving in and painting themselves. They said:

There was that possibility, which is why we gave them the alternative, but more than cleaning, there was still furniture in the place. They said they would continue to work on it, while we were living there. That's pretty extreme that the landlord would be coming and going as they please to finish what they needed to do.

The Landlords said:

We never rented [the unit]. I was the owner. By midnight everything was gone and we vacuumed. The painting – there was no verbal agreement or writing that said the walls were to be painted. They requested the cancellation, if we were not willing to prepare it to their standards. They initiated the end to the tenancy first. We did not say anything about cancellation. And we both had copies.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the

burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlords violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenants did what was reasonable to minimize the damage or loss.

(“Test”)

Section 67 of the Act allows for an arbitrator to determine the amount of compensation to be awarded to a party if another party has not complied with the Act, the regulations, or a tenancy agreement.

The Tenants have not directed me to a section of the Act that the Landlords violated. Essentially, the Tenants expected the Landlords to present the suite in a certain condition, but the Landlords were not agreeable to this standard.

Section 32 (1) states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline #1 helps interpret section 32 of the Act. It states that parties are not responsible for cleaning the premises to a higher standard than that set out in the Act. It also states that an arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The Landlord said that they had the furniture out of the rental unit by midnight. The Tenants could have moved in, cleaned themselves, and possibly claimed against the Landlord for cleaning costs. The Landlord said that the Tenants could have painted or had the rental unit painted, if they chose to do so.

I find that the Tenants have not provided sufficient evidence to explain why the Landlord should compensate them for a full year's rent. I find they Tenants did not fulfill the first step of the Test – they did not indicate how the Landlords violated the Act.

Further, I find that the Tenants did not make sufficient attempts to mitigate or minimize their losses, pursuant to step four of the Test. The Tenants mentioned the very tight housing market in the area in which they would prefer to live. Given this, I find it unreasonable that the Tenants failed to consider moving in to the rental unit, regardless of it not being cleaned or painted to their standard.

Given their failure to meet their burden of proof on a balance of probabilities, I dismiss the Tenants' claim wholly, without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenants are unsuccessful in their Application, as they failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenants' Application is dismissed wholly, 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: March 31, 2023

Residential Tenancy Branch