



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), a monetary order of \$2,750.00 for damage or compensation under the Act; for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover their \$100.00 Application filing fee.

The Tenants and the Landlord 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 Landlord 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 Landlord and her real estate agent separately with their Notice of Hearing documents and evidence by Canada Post registered mail, sent on December 12, 2022. The Tenants provided Canada Post tracking numbers as evidence of service. The Tenants also said after receiving an Order allowing substituted service of their documents to the Landlord, they emailed the Landlord these documents on March 28, 2023.

The Landlord said that she had to sell her house because of the war in the Ukraine. She said she did not receive the registered mail from the Tenants, although, she said she may have received the email, which she said she does not look at often; however, in the hearing, the Landlord said that the best way to communicate with her is through email.

Based on the Tenants' authorization to send the Notice of Hearing documents and evidence to the Landlord via email, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants and to consider their documentary evidence. The Landlord confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders would be sent to the appropriate Party in this manner.

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.

Given that the tenancy ended on December 31, 2022, I find that the Tenants' claim for an Order for the Landlord to Comply with the Act or tenancy agreement is no longer relevant. I, therefore, dismiss this claim without leave to reapply.

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 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on January 1, 2022, and ran to December 31, 2022, with a monthly rent of \$2,700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,350.00, and no pet damage deposit.

When I asked the Tenants to explain their claim, they stated:

Once the notice to vacate had been rescinded, the realtor who attended to view the property, etc. had been engaged by Landlord. Viewing times were agreed

upon. Those processes were not followed – no proper notice was given on several occasions, but we addressed it via email and text with both the realtor and the Landlord. However, the realtor on one occasion failed to secure the property – she left a door unlocked. I specified that the realtor was not welcome to attend property. She, herself, was not welcome. She could have another realtor attend; but it became a contentious relationship.

Our notice to vacate was via email and was acknowledged by the Landlord on November 28, 2022, which letter was submitted as evidence. I also have copied a copy of the email reply back from Landlord that she got the email.

It should be noted that during process, [the Landlord] chose to defer most communication to her realtor with exception of the post tenancy condition inspection report. We both signed this document, and were presented with copies.

Sometime thereafter, we intended to move out early – we offered to be gone earlier – but it was declined for monetary reasons. December's rent was paid. We vacated in the third week of November and paid rent in two places. And while December's rent and tenancy was still valid, the realtor entered our property with no notice and against our wishes, and as the evidence shows. I have text messages submitted between myself and the new owner of the property confirming that the realtor met them on site.

I asked the Tenants to explain how they calculated the amount they are claiming, and they said:

The amount of the December rent. We had numerous communications prior to this being filed where, if there was a reasonable settlement offered, we would discuss that, but with no returned communication.

The balance of evidence are screen shots of text communication between [the Tenants] and the realtor and or [the Landlord]. Essentially, it boils down to the realtor saying you abandoned property and we had to check it out. That is unequivocally incorrect. Rent was received for December and it was the Landlord's responsibility to tell her realtor to do it.

The Landlord responded, as follows:

I hired the real estate agent to sell my house and she had very good reviews and

no complaints. So many complaints from [the Tenants]. I was going to Ukraine and was not present. I don't understand the law very well. I do my best with what I understand from real estate. I allowed them to move in 10 days sooner. I'm single with three kids, I'm not rich. I hired that person to sell the property, and that minute they started to demand free rent from me. I will do that legally, if obliged. But it coincided with the tenancy agreement – for one year. I was not telling them to leave any time sooner. The new person wanted to buy and it was an investment and will not kick them out. But they decided to move out.

So, I don't know. They started to bombard me with text and emails, that she didn't close a door and didn't do that, and they will call the police. We do not know if it's true, and no body else complained. It was their word and their evidence. And calling the police? From when we did the last check of the house, everything was working, and they told me, when do you want the keys. I don't know, talk to my realtor. We will leave keys on the window sill in the garage. Then they wanted to sell a fan they installed to the new owners, and the people wanted to see it. That's why they entered after the inspection of the house with two Landlords – they did sell the fan they installed.

If they are mad at the real estate agent, they should reimburse. I don't know how to be in this situation, I tried to – I was obliged to give a two months' notice, and I gave them three months' notice. They said this is wrong, but I didn't do anything to them.

I asked the Tenants what loss they suffered as a result of this situation, and they said:

Am I out of pocket? No. But they have not followed the process required. I appreciate [the Landlord's] grasp of the law is weak – she engaged a realtor who ought to have known.

The bottom line is, during the tenancy, while we were still Tenants, your realtor accessed that property illegally. It's cut and dried. I don't want to go back and forth hearing the same things. I still don't have an issue with the Landlord, but the people she hired has acted on her behalf.

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 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 Landlord 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”)

Considering the Tenants’ evidence in terms of the Test, I find that the Landlord’s agent, the realtor, may have breached the Act, by not providing at least 24 hours’ notice of the planned attendance at the property. However, the Tenants said that they did not suffer any damage or loss as a result of the realtor’s action. As such, I find that the Tenants have failed to prove the second and third steps of the Test. As a result, I dismiss their Application wholly, as the undisputed evidence before me is that there was no loss suffered as a result of the violation. I make this finding pursuant to section 62 of the Act.

Conclusion

The Tenants are unsuccessful in their Application, as they failed to provide evidence of the loss they suffered, as a result of the Landlord having breached the Act. As a result, 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: April 25, 2023

Residential Tenancy Branch