



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #210087298: MNRL, FFL
File #910103895: MNDCT, FFT

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

The Tenants file their own application seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

D.B. and T.B. appeared as the Landlords. M.R. represented the Landlords. C.D. and S.D. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Style of Cause

Landlords' counsel raised issue with the style of cause in the Tenants' application, namely that it includes a law firm as a party. Based on the tenancy agreement, the law firm is not a landlord, nor did the Tenants argue that the law firm be considered as a landlord.

The Residential Tenancy Branch's jurisdiction to adjudicate disputes is established and constrained by the *Act*. By implication, claims are limited to disputes between the parties in tenancy agreements, which are tenants and the landlords in residential tenancies.

In this instance, I find that the law firm is not a party to the tenancy agreement and is not a landlord such that its inclusion as a party to the application is in error. As such that I find it appropriate to amend their application to remove it.

Issues to be Decided

- 1) Are the Landlords entitled to a monetary order for unpaid rent?
- 2) Are the Tenants entitled to a monetary order for compensation?
- 3) Is either side entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on July 1, 2022.
- The Tenants vacated the rental unit on September 30, 2022.
- Rent of \$3,200.00 was due on the first of each month.

I am provided with a copy of the tenancy agreement, which shows the tenancy was a on month-to-month basis.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) *Are the Landlords Entitled to a Monetary Order for Unpaid Rent?*

Landlords' counsel advises that the Tenants did not pay rent in September 2022. Landlords' counsel further advised that the Tenants gave notice to the Landlords on September 8, 2022 that they would be vacating the rental unit at the end of September. Counsel argued that the Landlords could have sought compensation for October 2022 as well as the unpaid rent for September 2022, but that they chose to limit their claim.

I am provided with a copy of the September 8, 2022 email in which the Tenants gave notice to the Landlords. It states the following:

This email serves as our notice to vacate on September 30, 2022 in accordance with the implied eviction notice that we received for landlord's use of the property.

In accordance with the RTA section 49 and 51, September's rent is being withheld and to be deemed paid.

Please note that I believe that we have over-paid in utilities from the start of the tenancy on July 1, 2022, having to pre-pay utilities each month in the amount of \$380.

We will schedule our move out inspection closer to the end of the month based on our moving schedule. Please advise how our security deposit is going to be handled.

The Tenants acknowledge they did not pay rent for September 2023.

a) *Does s. 51(1) Apply?*

I will briefly deal with the question of whether s. 51(1) of the *Act* applies. I note this was not directly argued by the Tenants at the hearing but is raised in their email of September 8, 2022. Section 51(1) of the *Act* grants tenants who have received a notice to end tenancy issued under s. 49 for landlord's use of the property to compensation equivalent to one month's rent.

Landlords' counsel emphasized that no notice to end tenancy had ever been served such that the Tenants are not entitled to a month's rent compensation. I enquired with the Tenants whether they had received a notice to end tenancy and if they could point to one in their evidence. The Tenants did not provide a direct response to the question. I accept that no notice to end tenancy had been served on the Tenants.

A notice to end tenancy issued under s. 49 of the *Act* must comply with the form and content requirements set by s. 52. Under s. 52 of the *Act*, if a notice to end tenancy is issued by a landlord, it must be in the approved form, which in this case would be form RTB-32.

The Tenants point to an email of August 12, 2022 sent to them by the Landlords' property manager. That email, provided to me by the Tenants, states the following:

First off, because I want to be honest and have door of communication open, they are planning to subdivide the property and sell off the home and a portion of the land and then keep the remaining land for themselves. The paperwork is just starting to get underway but it doesn't appear to be a complicated process as services are already in place. So it is very likely that your rental home will be going for sale in the near future. This will involve more visits for photos, showings etc.

So I think for your peace of mind to start looking to relocate would be the best route. You absolutely don't have to do that, but with all the visits that are

upcoming I don't think you are going to feel relaxed. [The Landlords] did say that if you found something that they would not require that you give the full months notice. If you want to take a look at that home on [redacted] let me know and we can go take a look. It is fully furnished, but you could use the basement to store your furniture in and it is very close to [redacted] for the dogs.

...

All of that said, the plan is to subdivide and sell so knowing that you can consider if it is worth all of the hassle for possibly another 6 months, or if you just want to decide to move along and I will do my absolute best to find you something as you are great tenants and I have a pretty good idea of what you are looking for.

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy. Subsequent reproductions will similarly redact personal identifying information.

It goes without saying that the email of August 12, 2022 is not in form RTB-32, such that is not proper notice by a landlord under s. 49 of the *Act*. Further, the email is not, strictly speaking, notice to end the tenancy even if the form requirement is ignored. It does not explicitly tell the Tenants that the tenancy is over or set an end date for the tenancy. Indeed, it specifically states that the Tenants need not move out, only that the Landlords intended to sell the property.

I find that the Tenants were not entitled to compensation under s. 51(1) of the *Act* as no notice to end tenancy had been served on them by the Landlords.

b) Was there an Agreement that the Tenants were not to pay September's Rent?

The Tenants argue that the Landlords' property manager extended an offer that rent be unpaid for September 2022 provided they move out by the end of the month.

By way of some context, the Tenants allege the Landlords breached the *Act*, which they allege resulted in pressure from the Landlords to end the tenancy. In making the allegation that pressure was applied by the Landlords, the Tenants direct me to the email of August 12, 2022 reproduced above, which they received some 6 weeks into their tenancy.

Regardless of how the August 12, 2022 email is construed, it clearly set in motion the events that ultimately ended the tenancy. Following the email, the Tenants say they felt pressured to move and settlement discussions on ending the tenancy were broached by the Tenants, in which they sought compensation for ending the tenancy. They put forward a settlement offer to the Landlords, which was rejected outright. On September 2, 2022, the Landlords' property manager communicated a counteroffer for settlement via email, which states the following:

I have spoken with [the Landlords] and they are agreeable to compensating you Septembers rent (Not utilities) if you vacate by Sept 30th.

They would like you to pay September rent (and utility payment) to [the Property Manager] and then [the Landlords] will put the full months rent in a trust account with their lawyer and he will release the money back to you at the end of the month when you have moved out. [T.B.] has cancelled the auto withdrawal on her end and given me verbal confirmation this morning that she is not withdrawing your rent for September. You are also welcome to check your account as it is the 2nd today and you will see that the rent has not been taken.

[The Property Manager] is holding the security and pet deposit. Provided the home is dean and undamaged you will receive your deposit money back. The 30th is a Friday so I can have admin write you up a cheque the same day if all is well.

As far as utilities all bills will come to myself and I will do the math to make sure any money owing back to you is returned. I can provide copies of those bills to you.

The [Landlords] are not agreeable to compensating moving expenses.

On September 2, 2022, C.D. responded to the Landlords' counteroffer calling it "bogus". The Tenant continued to say that the Landlords were being "unreasonable" and alleged the Landlords were not negotiating in good faith. The email ends with "we will be in touch".

No response came from the Tenants, such that the Landlords' property manager emailed on September 6, 2022 saying the following:

I am writing to check in on your plans for September. As September rent is still unpaid are you planning to vacate at the end of the month? If not, please send rent to

[Redacted]

Auto deposit is set up.

The Tenants responded to this email on September 8, 2022, which is the email reproduced above and was pointed to as the Tenants' notice they would be vacating. As argued by the Tenants, the September 6, 2022 email from the property manager comprised a settlement proposal, which they accepted by withholding rent and vacating on September 30, 2022.

The issue with the Tenants' position is that it looks at the September 6, 2022 email in isolation of the exchange that preceded it. The Tenants set out a proposal, which was rejected. The Landlords provided a counteroffer. The Tenants' responded to the counteroffer on September 2, 2022. In that response, the Tenants were generally disparaging of the Landlords' counteroffer, though they did not explicitly reject it. Instead, the Tenants say they would be in touch.

Technically, the Landlords' counteroffer was not rejected, nor did the Tenants provide a counterproposal of their own, such that the Landlords' counteroffer was still open to acceptance by the Tenants. Indeed, the Tenants left the door open, so to speak, by telling the property manager they would be in touch. Upon not hearing from the Tenants and not having received rent for September, the Landlords' agent, reasonably in my view, followed-up with the Tenants. The September 6, 2022 email is nothing more than a simple follow-up seeking confirmation from the Tenants on their intentions with respect to accepting the Landlords' counteroffer or paying rent.

Further, the Tenants' email of September 8, 2022 does not state that they were accepting the Landlords' counteroffer or that they were accepting the terms of a purported offer set out in the email of September 6. Instead, it explicitly states that rent was being withheld pursuant to s. 51(1) of the *Act*. As noted above, s. 51(1) of the *Act* does not apply as no notice to end tenancy had been served.

In other words, upon receipt of the Landlords' counteroffer, they neither explicitly accepted it nor did by their conduct did they accept it. Instead, they simply withheld rent,

which they were not permitted to do under the *Act* and did not do so pursuant to an agreement to that effect with the Landlords.

I find the September 6, 2022 email from the Landlords' property manager is not a new counteroffer by the Landlords, nor did the Tenants act on it as if it were, instead withholding rent pursuant to a section of the *Act* that does not apply.

c) Conclusion Regarding Unpaid Rent Claim

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In this instance, there is no dispute rent for September 2022 was not paid. As set out above, the Tenants withheld rent pursuant to a section of the *Act* that was inapplicable. Further, the Tenants did not act under the Landlords counteroffer.

I find that the Landlords have established that the Tenants breached their obligation to pay rent under the tenancy agreement in contravention with s. 26 of the *Act*. I further find that the Landlords suffered a loss in rental income under the tenancy agreement of \$3,200.00, which could not have been mitigated as the Tenants continued to occupy the rental unit.

I find that the Landlords are entitled to \$3,200.00 in unpaid rent.

Landlords' counsel made mention of an unpaid utility claim. I note that Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application. In this case, the Landlords' claim for unpaid rent and limit their claim to \$3,200.00. No amendment to the Landlords' application was filed changing the amount claimed upwards to reflect the utilities. As the amount claimed has been met, I do not consider the unpaid utilities claim as it was improperly pled.

2) Are the Tenants Entitled to a Monetary Order for Compensation?

The Tenants claim reimbursement for various moving expenses and costs associated with moving into the rental unit. According to the Tenants, they entered into the tenancy agreement with the understanding that it would be a long-term tenancy and moved to the rental unit from a community located a five-hour drive away. S.D. spoke to having a conversation with D.B. on June 25, 2022 in which he told the Landlord that he and C.D.

would be looking for a property of their own in two or three years such that they were looking for a long-term tenancy.

The Tenants' monetary claim rests upon two assumptions. First, that the tenancy would be long-term. Second, the tenancy ended early due to the Landlords ending it.

Looking at the term of the tenancy, the tenancy agreement clearly shows it was a monthly periodic tenancy. Even if I were to accept the conversation of June 25, 2022 took place as stated by the Tenants, the parties signed the tenancy agreement on June 28, 2022. Section 13(1) of the *Act* requires all tenancy agreements to be in writing. The tenancy agreement notes the term is month-to-month, not for one year, two years, or three years. The Tenants could have bargained for a longer term. They did not. Instead, they signed a tenancy agreement with a monthly periodic term.

Further, the tenancy did not end due to the Landlords providing notice such that the short-term nature of the tenancy is a direct result of the Tenants conduct. The Tenants vacated the rental unit. They did so without receiving notice from the Landlords. In other words, they were under no obligation to leave when they did and could have stayed longer.

Its purely speculative to say if the Landlords would have served a notice to end tenancy or whether a buyer would have asked for vacant possession. The Tenants made a choice to vacate, choosing the certainty of alternate accommodations over the uncertainty of what the Landlords or a prospective buyer had planned. Such is their choice. However, it is inappropriate to lay the blame for their choice on the Landlords, who have not breached the *Act* or the tenancy agreement based on the evidence provided to me.

I find that the Tenants have failed to show the Landlords breached the *Act* or the tenancy agreement. I dismiss their monetary claim without leave to reapply.

Conclusion

I grant the Landlords a monetary order pursuant to s. 67 of the *Act* for unpaid rent in the amount of \$3,200.00.

I dismiss the Tenants' monetary claim under s. 67 of the *Act* without leave to reapply.

The Landlords were successful, and the Tenants were unsuccessful. I find that the Landlords are entitled to their filing fee and the Tenants are not. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlords' \$100.00 filing fee. The Tenants' claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenants pay **\$3,300.00** to the Landlords.

It is the Landlords' obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: May 31, 2023

Residential Tenancy Branch