



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, RPP, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on April 10, 2023 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use of the Property;
- a monetary order for damage or compensation;
- an order granting the return of the Tenants' personal property; and
- an order granting the return of the filing fee.

The Tenants, the Landlord S.M., and the Landlord's Counsel A.E. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Counsel confirmed receipt of the Notice of Hearing and the Tenants' evidence. The Landlord's Counsel confirmed that they are acting on behalf of the Landlords. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlords did not submit any evidence in response to the Tenants' Application.

Preliminary Matters

The Tenants stated that they wished to withdraw their claim for the return of their personal property as they are pursuing this claim in a different dispute. The claim was withdrawn accordingly. The hearing continued based on the Tenants' monetary claims.

The parties agreed that they took part in a previous Dispute Resolution Hearing which dealt with the Tenants' Application to cancel a 10 Day Notice for Unpaid rent, a One

Month Notice to End Tenancy for Cause, and a Two Month Notice to End Tenancy for Landlord's Use of the Rental Unit (File No. listed on the cover page of this Decision).

In the October 5, 2022 Decision, the Arbitrator dismissed the Tenants' Application and issued a Two Day Order of Possession to the Landlords based on a One Month Notice. The parties confirmed that the Bailiffs attended on October 11, 2022 at which point the tenancy ended. The Tenants applied for Judicial Review which has since concluded. The Landlord's Counsel stated they have filed an appeal; therefore the matter is still before a higher Court. The Landlord's Counsel stated that the RTB does not have jurisdiction to decide on the matter given the appeal is before a higher Court. The Landlords did not submit any evidence in support of this position.

Section 58(2)(C) of the *Act* confirms that a director must resolve a dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

In this case, I find that the Tenants' Application relates to monetary compensation for an overpayment of rent and for compensation relating to a Two Month Notice. I find that these claims are not substantially linked to the matter that had been before the Supreme Court. As such, I find that I do have jurisdiction to decide on the Tenants' Application today.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2018. The Tenants were required to pay rent in the amount of \$2,500.00 which was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,250.00 and a pet damage deposit in the amount of \$1,000.00. The tenancy ended on October 11, 2022.

The Tenants are claiming \$1,712.90 which represents a pro rated amount of October 2022 rent from October 11, 2022 to October 31, 2022. The Tenants stated that the Landlords cashed the Tenants' October 2022 rent cheque before the Landlords were successful in gaining an Order of Possession in the October 5, 2022 Decision, which was followed by the Bailiff attending the rental unit on October 11, 2022 which ultimately ended the tenancy. The Tenants stated that they did not occupy the rental unit beyond October 11, 2022, therefore, they are seeking reimbursement for the remaining days they paid rent for, but did not occupy the rental unit.

The Landlords' Counsel stated that the Tenants' claim was already addressed in a previous hearing where they had disputed an illegal rent increase. The Tenants stated that this claim had nothing to do with a rent increase, as they were only seeking a reimbursement of rent for days they did not occupy the rental unit.

The Tenants are also seeking compensation in the amount of \$30,000.00 which is equivalent to 12 times the amount of rent as the Landlords have not accomplished the stated purpose of the Two Month Notice for Landlord's Use of the Property dated May 24, 2022.

The Landlords' Counsel referred to the October 5, 2022 Decision in which the Landlord withdrew the Two Month Notice and stated that the Tenants consented to the withdrawal which was reflected in the Decision. As such, the Landlords' Counsel stated that the Landlords were not obligated to accomplish the stated purpose of the Two Month Notice as the parties had previously agreed that the Two Month Notice was withdrawn. The Tenants confirmed that they consented to the withdrawal of the Two Month Notice.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

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

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

The Tenants are claiming \$1,712.90 which represents a pro rated amount of October 2022 rent from October 11, 2022 to October 31, 2022. In this case, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlords breached the *Act* by hiring a Bailiff to attend the rental unit on October 11, 2022 which ended the tenancy. I find that the Tenants were still required to pay rent when due on October 1, 2022. As such, I find that the Tenants are not entitled to compensation and dismiss this claim without leave to reapply.

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Policy Guideline 11 (C) WITHDRAWAL OF NOTICE TO END TENANCY: A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

In this case, I accept that the Tenants disputed the Two Month Notice dated May 24, 2022 which put the effective date of the Two Month Notice on pause until the outcome

of the hearing. I find that the parties attended the hearing and based on the October 5, 2022 Decision, it was found that;

“The Landlords withdrew the Two Month Notice and the Tenants agreed to this withdrawal.”

I find that the parties mutually agreed to the withdrawal of the Two Month Notice which was reflected in the October 5, 2022 Decision. As such, I find that the Two Month Notice was cancelled and has no force or effect. Therefore, I find that the Tenants are not entitled to compensation relating to the Two Month Notice which they consented to the withdrawal of. I dismiss the Tenants claim for compensation under Section 51 of the *Act*.

As the Tenants were not successful with their Application, I find that they are not entitled to the return of the filing fee paid to make the Application.

Conclusion

The Tenants’ Application for monetary compensation is dismissed in its 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: July 25, 2023

Residential Tenancy Branch