



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, MNDCT, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of aspects of the dispute with the following terms:

1. The parties mutually agree to end the tenancy in accordance with the landlord's notice to end tenancy. This tenancy will end at 1:00 p.m. on November 01, 2023 by which time the tenants and any other occupants will have vacated the rental unit.
2. The landlord will return the rent paid to the tenants in the amount of \$1,656.00.
3. The rights and obligations of the parties continue until the tenancy ends.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles this aspects of this dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to this portion of the application before me.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is required to serve this Order of Possession upon the tenant and may enforce it as early as 1:00 p.m. on November 01, 2023, should the landlord be required to do so.

In order to implement the above settlement reached between the parties and as discussed with them at the hearing, I issue a monetary Order in the tenants' favour in the amount of \$1,656.00.

The issue identified in the tenants' application seeking an order that the landlord comply with the Act sought an order that I hold the landlord's notice to end tenancy void and cancelled. As the parties mutually agreed the tenancy will end, I dismissed this portion of the tenants' application during the hearing.

Issue(s) to be Decided

Are the tenants entitled to an order of compensation?

Can the tenants recover the filing fee?

Background and Evidence

The tenant S.S. gave the following testimony. He has been renting this unit far below market rates. The landlord has felt the pressure of an increase in the prices and for this reason wants to end their tenancy. There is a pressure to capitalize on the market and the reason of ending the tenancy, for the father to move in, is a desperate attempt to take advantage of it. The tenants feel they are entitled to \$1,000.00 per month for 12 months for the extra cost to rent a home in the vicinity.

The landlord testified that her father was served with an eviction at his own rental unit and for that reason and because of his deteriorating health, he requires the tenant's rental unit to live in. The landlord contends that there is no justification for the compensation as her father hasn't even moved in.

The tenant also seeks \$5,000.00 for what he describes in his application as *"emotional stress that was caused to us by the clear and deliberate disregard for (the landlord's) duties as a landlord in B.C."* He testified that they will now pay double what they were previously paying in the rate unit owned by the landlord described as far below market rates. Being served with the eviction has disturbed his peace and comfort and he has no family support in the province. The landlord counters that the tenants' failure to leave has caused her father great discomfort in having to live with his possessions in a trailer and co-habiting temporarily with her.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or 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; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

In the case before me, I do not find any failure to comply with the Act by the landlord as required under section 7 of the Act. The landlord issued the notice to end tenancy so that her father could occupy the rental unit. Although the tenants initially disputed the notice, they agreed to vacate it. While I make no finding as to whether the notice to end tenancy was valid, I accept that the landlord was acting within her rights to issue it.

Consequently, the tenants have failed to establish their claim for \$12,000.00 for the landlord ending their tenancy. While I accept that they were paying far below market value for the unit they were renting, the landlord is not responsible for ensuring they could find a suitably comparable unit that remained within their budget. This portion of their application is dismissed without leave to reapply.

I find insufficient evidence to justify the \$5,000.00 the tenants seek for emotional stress caused by *the landlord's clear and deliberate disregard for her duties as a landlord*. The tenant did not provide any documentary evidence of damage to their well being from the landlord's actions, such as medical, psychiatric or psychological reports from medical professionals. (point 2 of the 4-point test). Nor have they supplied any means for me to determine whether the \$5,000.00 amount was arbitrary or based on any meaningful

scale or case law where an applicant was granted a similar order for compensation. (point 3). For these reasons, this portion of the tenants' claim is dismissed.

Lastly, the tenants sought \$2,000.00 "*in order to provide a clear message to all landlords that they must refrain from exploiting their position solely for their own advantage*". The purpose of compensation is to put the injured party in the same position they would be in if there had been no infraction of the Act. Any award for compensation must not include any punitive element (see policy guideline 16 at page 2). This portion of the tenant's claim is likewise dismissed.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is required to serve this Order of Possession upon the tenant and may enforce it as early as 1:00 p.m. on November 01, 2023, should the landlord be required to do so.

In order to implement the above settlement reached between the parties and as discussed with them at the hearing, I issue a monetary Order in the tenants' favour in the amount of \$1,656.00.

The remainder of the tenants' application is dismissed 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: October 03, 2023

Residential Tenancy Branch