



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Tenants' Application for:

- a Monetary Order of \$21,000.00 for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act
- the Landlords to return the Tenants' personal property
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

And the Landlords' Application for:

- a Monetary Order of \$1,750.00 for unpaid rent, and authorization to retain the Tenants' security deposit
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Tenant SMBN attended the hearing.

Landlord AS1 and Landlord AS2 attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

At the outset of the hearing both parties identified themselves as the Landlords or Tenants and provided their legal names.

Based on the testimony of the parties and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.2, I amended the Tenants' application to include the correct names of the Tenants and Landlords.

Tenant SMBN testified that they applied for the Landlords to return their personal property as they anticipated this to be an issue at the time of the application. SMBN testified that this claim has resolved between the parties and they would like to withdraw their application for the Landlords to return their personal property. As such, this claim is dismissed without leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy?

Are the Tenants entitled to recover the filing fee for their application from the Landlords?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to cover the filing fee for their application from the Tenants?

Background and Evidence

The rental unit is the basement suite in a House (the House). The Landlords resided on the upper level of the House.

Tenant SMBN testified that their tenancy started on September 10, 2022, with the previous owner (the Previous Owner) of the residential property. SMBN testified that the Previous Owner sold the residential property and informed them that the buyer (the Buyer) has requested vacant possession as their family will occupy the House, to include the rental unit.

SMBN testified that on September 25, 2023, the Previous Owner served to them the following form from the Buyer of the residential property:

- Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession

The Tenants submitted the above form as part of their documentary evidence.

SMBN testified that they approached the Buyer, the Landlords, for compensation equivalent to one month's rent. SMBN testified that on October 31, 2023, the parties signed a Mutual Agreement form (the Mutual Agreement) and the Landlords paid to the Tenants \$1,750.00, which is equivalent to one month's rent.

SMBN testified that they vacated the rental unit on November 5, 2023.

SMBN testified that on November 1, 2023, they viewed a Facebook advertisement for the re-rental of the rental unit. SMBN stated that they are seeking compensation as the stated purpose for ending the tenancy was not accomplished by the Landlords

Landlord AS2 testified that they occupied the House on October 19, 2023 and the rental unit as of November 6, 2023. AS2 testified that the Tenants vacated the rental unit on November 6, 2023.

AS2 testified that on October 31, 2023, the parties signed the Mutual Agreement, with the agreement that the Landlords will pay to the Tenants the amount of \$1,750.00. AS2 testified that they made the payment of \$1,750.00 and the tenancy ended by way of a Mutual Agreement between the parties.

AS2 testified that they agreed to pay the amount of \$1,750.00 and only made an application for unpaid rent in this amount due to the Tenants' application and dispute of their mutually agreed upon terms.

The Landlords submitted the Mutual Agreement and confirmation of the \$1,750.00 e-transfer transaction as part of their documentary evidence.

Analysis

Are the Tenants entitled to a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy?

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if the stated purpose for ending the tenancy is not accomplished within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least six months' duration.

What this means is that the triggering event entitling a tenant to receive compensation equivalent to 12 times the monthly rent under the tenancy agreement is receiving a notice to end the tenancy issued under the authority of section 49 of the Act.

The Tenants did not receive such a notice. As such, the Tenants are not eligible for any of the relief set out at section 51(2) of the Act. In this case, the tenancy ended by a Mutual Agreement between the parties, and not by a Two Month Notice to End Tenancy for Landlord's Use of the Property. I accept there was the Buyer's Notice to Seller for Vacant possession, however, I find that this form is not a proper and approved form as per section 52 of the Act.

Therefore, I find the Tenants are not entitled to a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$21,000.00.

I dismiss the Tenants' application without leave to reapply.

Are the Tenants entitled to recover the filing fee for their application from the Landlords?

As the Tenants were not successful in their application, the Tenants' application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Under section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or tenancy agreement, the director may determine the amount of, and order the party to pay, compensation to the other party.

Based on the evidence before me, I find that the Landlords have not established a claim for unpaid rent in the amount of \$1,750.00.

As per the testimony of both parties, there is no issue of unpaid rent. In this case, the parties mutually agreed to the payment of \$1,750.00 from the Landlords to the Tenants, as a term of the Mutual Agreement to end the tenancy.

I find there is no unpaid rent and that the Landlords did not prove loss due to the Tenants' non-compliance with the Act, regulations or the tenancy agreement. As such, this claim is dismissed without leave to reapply.

Are the Landlords entitled to cover the filing fee for their application from the Tenants?

As the Landlords were not successful in their application, the Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenants' application is dismissed in its entirety, without leave to reapply.

The Landlords' application 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: April 16, 2024

Residential Tenancy Branch