



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNEVC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; monetary compensation from the landlords related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term; and to recover the filing fee from the landlords for the cost of the application.

One of the named landlords attended the hearing with an Interpreter, who was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the Interpreter's skill and ability. The tenants were represented at the hearing by an agent. The landlord and the tenants' agent each gave affirmed testimony and the parties were given the opportunity to question each other.

At the commencement of the hearing I questioned the parties respecting service or delivery of evidence. The landlords had not provided evidence that had been uploaded to the Residential Tenancy Branch automated system on September 23, 2024, and the evidence of the tenants uploaded on September 30, 2024, which was 1 day prior to the hearing, was not provided to the landlords. Therefore, I found that those evidentiary documents should not be considered. All other evidence of the parties has been reviewed, and the evidence and testimony I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for replacement of furniture?

- Have the landlords established that the landlords have ended the tenancy in accordance with the law, or in good faith?
- Should the tenants recover the filing fee from the landlords?

Background and Evidence

The landlord testified that there was no month-to-month tenancy. The fixed-term tenancy began on September 24, 2021 and expired on September 23, 2023. The landlord is not aware of when the tenants vacated the rental unit, however in mid-June, 2023 the landlord discovered that the tenants had abandoned the rental unit. The landlord reached out to the tenants at the end of May, 2023 to ask what the tenants' plans were. A copy of the tenancy agreement has been provided for this hearing, which is silent on what happens at the end of the fixed term, and is silent on when rent is payable. Rent in the amount of \$3,800.00 per month is specified in the tenancy agreement. The landlords collected a security deposit from the tenants in the amount of \$1,900.00 as well as a pet damage deposit in the amount of \$1,900.00. The rental unit is a single family house.

The landlord has provided a copy of a Decision of the director, Residential Tenancy Branch dated March 11, 2024, following a hearing on February 15, 2024, wherein the landlords had applied for monetary orders as against the tenants, and to keep the security deposit and pet damage deposit. The result states that the landlords were permitted to keep the \$5,787.46 security deposit and pet damage deposit and interest, and other relief.

The landlord further testified that the tenancy ended in September, 2023 and the landlords lost contact from the tenants. The utilities had been closed, and the landlord repeatedly tried to reach out to the tenants.

The evidence provided by the tenants has been forged, specifically the Invoice from IKEA and the date of a camping trip alleged by the tenants. The landlord went to the IKEA website and found that the tenants' order had been cancelled, so the evidence has been photoshopped. The landlord also went to the camping website and put in the name of the guests, and found that the tenants' camping trip was on July 3, 2024. The landlord was out of the Country until early September, 2023 and didn't have time to upload the evidence or provide it to the tenants.

The tenants did not give notice to end the tenancy, but abandoned the rental unit, and the landlord re-rented the rental unit for \$5,700.00 per month effective September 1, 2023. The Residential Tenancy Branch had advised the landlords that if the utilities had been disconnected, the landlord could consider the rental unit abandoned.

Previous tenants had left some items behind, and furniture was their personal belongings.

The tenants' Agent testified that in May, 2023 the landlord tried to talk to the tenants about another 1 year fixed term. In June, 2023 the tenants were out of town, so didn't pay rent on time. The landlord took back the property and re-rented, acting in bad faith, so the tenants didn't pay the rent. There was an oral agreement that the tenants could pay rent at the end of each month. The tenants returned on June 6, 2023 from a camping trip, and discovered that the home owner took back the property without an order of possession or a legal process.

The tenants' agent also testified that the landlords kept the tenants' furniture without the tenants' consent. The tenants had no way to go back, so rented another property on a month-to-month basis. The evidence of the power and gas being turned off provided by the landlords is not in a good form, and is not entirely readable by the tenants.

After the tenants contacted the owner, the tenants were told that they had to pay \$30,000.00 for damages or rent, and it was difficult to communicate with the owners. Police were called, who advised that the parties should go to the Residential Tenancy Branch.

The move-out date was July 14, 2024. Witness statements have also been provided for this hearing.

Analysis

Firstly, where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenants claim \$6,027.84 for the landlords' removal and disposal of the tenants' furniture. A list of the furniture has been provided for this hearing, which includes a 3 piece bed for \$1,457.00; 3 pieces of mattress at a cost of \$1,797.00; a table at a cost of \$349.00; 4 pieces of a chair costing \$440.00; a sofa at a cost of \$1,299.00 and taxes amounting to \$645.84. The tenants have also provided an Invoice for those items at IKEA dated July 15, 2024.

The landlord testified that the order had been cancelled and the tenants did not suffer that loss. The landlord also testified that the furniture in the rental unit belonged to previous tenants. The tenants did not dispute that testimony. Any award for damage or loss is meant to put the claiming party in the same financial position that the claiming party would be if the damage or loss had not existed. As a result, I am not satisfied that the tenants have established that the damage or loss exists, or that any furniture that did belong to the tenants was worth the same amount, or similar to what the tenants had lost. Therefore, I dismiss that part of the tenants' application.

With respect to the tenants' monetary claim regarding ending the tenancy at the end of the fixed-term, I refer to Residential Tenancy Policy Guideline 30 – Fixed Term Tenancies, which states, in part:

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term. It can only be included in a fixed term tenancy in the following circumstances:

- the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term, or
- the tenancy agreement is a sublease agreement.

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay one month's rent as compensation as required when ending a tenancy under section 49.

If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy.

I have reviewed the tenancy agreement, which specifies a fixed-term from August 20, 2021 until September 23, 2023 but is silent on what happens at the end of the fixed term. There is no indication that the landlord or a close family member will occupy the rental unit and it is not a sublease agreement. Therefore, I find that at the end of the fixed term, the rental unit would revert to a month-to-month tenancy.

However, the landlord testified that the tenants had cancelled the utilities, and the landlord discovered in mid-June, 2023 that the tenants had abandoned the rental unit. The tenants' agent testified that the tenants moved out on July 14, 2023, and that the

landlords took back the property without an order of possession and without a legal process. The landlords have provided evidence of an online conversation with an employee of Fortis BC Gas, which shows that there wasn't an active account since June 3rd, and a letter dated June 10, 2023 from BC Hydro stating that there is currently no BC Hydro account registered to the rental address.

As a result, I am not satisfied that the tenants were required to vacate prior to or at the end of the fixed-term. A landlord may be required to compensate tenants if the tenants were required to vacate at the end of the fixed-term for the landlord or close family member to occupy the rental unit, and did not do so. I find that the tenants vacated the rental unit without notice to the landlords, prior to the end of the fixed-term. Therefore, I dismiss that portion of the tenants' application.

Since the tenants have not been successful with the application, the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: October 04, 2024

Residential Tenancy Branch