



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation in the amount of \$45,000.00 from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property; and to recover the filing fee of \$100.00 from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing, and the parties were accompanied by Legal Counsel. One of the tenants gave affirmed testimony, and Legal Counsel for the landlords was permitted to question the tenant. Legal Counsel for both parties gave oral submissions.

At the commencement of the hearing, Legal Counsel for the landlords indicated that the late evidence uploaded for this hearing was provided to Legal Counsel for the tenants yesterday. Legal Counsel for the tenants did not oppose inclusion of the landlords' evidentiary material, and all evidence of the parties has been reviewed and is considered in this Decision.

Also at the commencement of the hearing, Legal Counsel for the landlords indicated that the landlords agree to the tenants' claim of 12 times the monthly rent payable under the tenancy agreement, but do not agree to the additional claims of the tenants for additional moving expenses and a penalty.

Legal Counsel for the tenants withdrew a portion of the monetary application that seeks a \$5,000.00 monetary penalty.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the tenants established a monetary claim as against the landlords for further compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for additional moving expenses?

Background and Evidence

The parties agree that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy has been provided as evidence for this hearing and it is dated March 31, 2021 and contains an effective date of vacancy of May 31, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. The landlords sold the rental unit.

The tenant (SM) testified that this fixed term tenancy began on May 1, 2018 and a copy of the tenancy agreement has been provided for this hearing showing that the tenancy reverts to a month-to-month tenancy after April 31, 2019. However the tenant testified that new tenancy agreements were entered into later. The tenancy ended at the end of May, 2021. Rent in the amount of \$3,200.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,600.00 which has been returned to the tenants in full. The tenants also received compensation in the amount of \$3,200.00 from the landlords at the end of the tenancy. The rental unit is an apartment, and the landlords did not reside in the building; the tenants only dealt with a property manager.

The tenant further testified that her spouse was diagnosed with cancer and had to undergo extensive chemotherapy. The tenants attempted to negotiate an extension of the move-out date on compassionate grounds, without success. Due to the illness of the other tenant, additional expenses were incurred, and invoices have been provided as evidence for this hearing.

The tenant had to hire a professional carpet cleaner, make several trips back and forth to clean and meet with the carpet cleaners. The tenant could have rented a carpet cleaning machine, but it would have been an easier process with the help of the tenant's partner, who could not assist. The property manager reiterated several times that the rental unit had to be left clean. The tenants also hired movers to assist because it

affected the other tenant's spine and he was in pain and not allowed to lift anything. The tenants could have done it themselves except for the illness of the other tenant. The tenants also purchased boxes, and the tenant testified that the movers requested that the tenants have everything boxed up. Special boxes also had to be purchased for the larger items, such as TV's. Purchasing boxes was the easiest way the tenant could obtain moving boxes, and in the normal course of things would have wrapped blankets around the larger items rather than purchasing larger boxes. A knife was also purchased to cut a box down to the size of one of the TV's. Receipts have also been provided for this hearing.

The tenant also testified that the other tenant still suffers from the illness. The tenants' plan was to continue to rent, and would have approached the purchasers to rent from them if possible.

SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

The tenants have proven damages regarding being evicted, and expenses they would not have incurred.

SUBMISSIONS OF THE LANDLORDS' LEGAL COUNSEL:

The expenses claimed would have been put to the tenants in any event. Whether it was at the end of May or 60 days later, there is no indication that health or a material change would have allowed the tenants to make the move. The method of termination has no bearing.

Analysis

In this case, there is no question that the landlords failed to accomplish the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property for ending the tenancy. The landlords provided the tenants with the equivalent of 1 months' rent, or \$3,200.00, which is compensation required by the *Act*, generally meant to cover moving expenses. The tenants claim additional moving expenses that the tenants would not have had to pay if the landlords had complied with the *Act*.

In order to be successful in a claim for damage or loss, the tenants must establish that they suffered a loss, that the loss was suffered as a result of the landlords' failure to comply with the *Act* or the tenancy agreement, the amount of the loss, and what efforts the tenants made to mitigate any damage or loss suffered. The tenants have provided receipts to substantiate the amounts, which total \$2,045.78.

I agree with Legal Counsel for the landlords that the tenants would have incurred the moving expenses whether the tenancy ended at the time that it ended, or a later date. I am not satisfied that the additional moving expenses claimed were suffered and not already compensated for by the landlords, but the expenses were incurred due to the illness of one of the tenants, and I dismiss the claim.

Since the tenants have not been successful with that portion of the claim, and the balance of the claim has settled, I decline to order that the tenants recover the filing fee from the landlords.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$38,400.00.

This order is final and binding and may be enforced.

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: March 11, 2022

Residential Tenancy Branch