



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for compensation that related to a mutual agreement to end the tenancy and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The landlord indicated that they did not receive any evidence from the tenants, although they have asked the tenants on several occasion to provide their documents that were submitted with their application. I have reviewed the tenant's evidence, which consist of the mutual agreement to end the tenancy and the agreement setting out the agreement for compensation. The landlord agreed that they have no issues with those documents being considered at today's hearing. The tenant did not dispute that they received the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to compensation that relates to a mutual agreement to end the tenancy?

Background and Evidence

The tenancy began on or about July 1, 2020. Rent in the amount of \$2,200.00 was payable on the first of each month. A security deposit of \$2,200.00 and a pet damage deposit of \$750.00 were paid by the tenants.

The tenants testified that they mutual agreement to end the tenancy (the “agreement”) effective October 1, 2021. The tenants testified that they are seeking the additional \$1,000.00 as they moved out of the premises earlier by date and time in the agreement, which was September 1, 2021, at 12PM.

The landlord testified that the tenants did not fulfill their obligation on the earlier move out clause for the additional compensation, as they had a large trailer on the property with their belongings, a boat, stuff on the deck and a scaffolding that was used as a dog kennel. The landlord stated the tenants had until October 1, 2021, to vacated; however, the additional compensation was that they had to be out on or before September 1, 2021, at 12 pm. The landlord stated that the tenants did not remove their belongings until September 3, 2021, which does not meet the requirements of that agreement and therefore, not entitled to the additional compensation.

The tenants argued that they had one vehicle getting repairs and the rental vehicle, a Ford Expedition, did not have the tow compacity for weight to move the trailer. The tenants also stated that the landlord was going to help. The tenants stated they did there best to try and meet the deadline as they did have their belongings out of the rental unit; but were unable to remove them off the premises until September 3, 2021.

The tenants argued that they did receive the one month’s free rent for ending the tenancy, so their position is that they should also be automatically entitled to receive the \$1,000.00 additional compensation.

The landlord argued that they never agreed to let the tenants use their vehicle to remove their property and their rented vehicle would not have exceed the tow capacity to move the trailer, or their ability to remove the boat or dog kennel. The landlord stated that the agreement was two parts the free rent or compensation equal to free rent was for entering the mutual agreement. The second part was an incentive only if they vacated the premises early, on or before September 1, 2021, at 12 PM, which they did not do.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The parties entered into the agreement to end the tenancy effective October 1, 2021, and the tenants would be entitled to one month free rent. That is not the issue before, as that compensation has been received. The issue before me, is whether or not the tenants are entitled to the additional compensations set out in the agreement.

The agreement states that if the tenants moveout before September 1, 2021, at 12 PM that they would be entitled to receive from the landlord additional compensation in the amount of \$1,000.00 for moving out early.

In this case, the tenants did not remove their belonging from the premises on or before September 1, 2021, at 12 PM, as their personal property was not removed from the property until September 3, 2021, which consisted of a boat, a larger trailer containing their belongings, and a dog kennel structure. There is nothing in the agreement that gave the tenants permission to keep their belonging stored on the property after that date.

Further, I do not accept the tenant's testimony that the Ford Expedition could not pull their trailer as the tenant sent a text message to the landlord which states "As soon as I receive the 2200 that the Ford Expedition is ready to haul the trailer out pal and you never have to here from us again. That or Brad will move it for me any time as well."

I cannot find the landlord breached the mutual agreement as the onus was on the tenants to meet the deadline if they wanted to receive the additional compensation, which they did not do. I find it more likely than not that the tenant's purposely did not remove their belongings as they had not at that time received \$2,200.00 from the landlord; however, I note the agreement does not state that the tenants are entitled to receive any compensation prior to them vacating the premises.

I find the tenants did not meet the deadline of September 1, 2021, at 12 PM. I find the tenants are not entitled to the additional compensation set out in the mutual agreement to end the tenancy. Therefore, I dismiss the tenants' application without leave to reapply. As the tenants were not successful, I find the tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

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: May 24, 2022

Residential Tenancy Branch