



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property), or for losses associated with this tenancy due to the landlord's contravention of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2020 with monthly rent set at \$1,400.00, payable on the first of the month. The landlord had collected a security deposit of \$800.00, which was returned to the tenants when the tenancy ended. The tenant testified in the hearing that they could not recall the exact date that the tenancy had ended, but that they had moved out on or about July 31, 2022 after the landlord had informed them that they wanted to sell the home.

The tenants filed this application as they feel that the landlord had provided false information to the tenants, causing them to move out. The tenants testified that the landlord had attended the property to take photos, informing them that they needed the photos for insurance purposes. The tenant testified that the landlord had informed them that they were moving in, and that the tenants needed to find a new place to live.

The tenant testified that they looked for new housing, and were unable to find an affordable new place to live in the area. The tenants decided to move back to their home which is located out of the province before the winter weather set in. The tenants are seeking reimbursement of their moving costs (\$1,100.00), lost wages (\$3,900.00), fuel for moving (\$700.00), as well as reimbursement of \$4,000.00 they had spent for the washer and dryer they had purchased for the rental unit.

The landlord responded that they did originally have intentions of selling their home, and moving into the rental home. The landlord testified that they had attempted to list their residence for sale online, but there was no interest. The landlord then decided to remain in their residence until they found a buyer. The landlord testified that they had never served the tenants with a 2 Month Notice to End Tenancy, and that they had informed the tenants that they did not have to move out yet.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *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.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenants applied for compensation relating to a tenancy that had ended.

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

In this case, although the landlord did communicate to the tenants that they wanted to move into the home, I find the landlord did not end the tenancy by way of a Notice to End Tenancy that complies with section 52(e) of the *Act*. In order to be eligible for compensation pursuant to section 51, the *Act* requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice

I find that the tenants had agreed to move out, and not as a result of receiving a 2 Month Notice pursuant to Section 49 of the *Act*. On this basis, the tenants are not

eligible for monetary compensation pursuant to section 51 of the *Act* as this tenancy did not end on the basis of a Notice given under section 49 of the *Act*.

I have considered the tenants' claims for reimbursement of losses associated with moving. As noted above, the tenants must establish that the loss is due to the other party's contravention of the *Act*. I am not satisfied that the evidence shows that the landlord had intentions to mislead the tenants, nor am I satisfied that the tenants had established that the landlord had contravened the *Act* or tenancy agreement., For these reasons, I dismiss the tenants' claims for these losses without leave to reapply.

The tenants also filed a claim for reimbursement of the purchase of the washer and dryer. Although I am sympathetic towards the situation that the tenants had faced, I note that the evidence does not show that the landlord had agreed to reimburse the tenants for these purchases. I find that the tenants had made the decision to purchase the washer and dryer, and made the decision to leave them when they had moved out. For this reason, I dismiss this claim without leave to reapply.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee.

Conclusion

The tenants' entire 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: April 18, 2023

Residential Tenancy Branch