



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on October 01, 2009 for a fixed term of six months and reverted to a month to month tenancy after the term had expired. Rent for this unit was \$1,100.00 per month and was due on the first day of each month. There were two tenants living in the rental unit which was a carriage house on the property.

The tenant testifies that they had prepaid their rent for January, 2013, however on November 24, 2012 the landlord asked the tenants to move out because he had sold the property. The tenant testifies that at first the landlord asked the tenant to sign a mutual agreement form from the Residential Tenancy Office however the tenant pointed out that the landlord must serve the tenant with a Two Month Notice to End Tenancy. The tenant testifies that she printed one off for the landlord and filled in the landlords name on the form. Along with that Notice the tenant testifies that they draw up another mutual agreement to end the tenancy on January 31, 2013 as an addendum to the Notice.

The tenant testifies that the landlord said the new purchasers wanted to use the carriage house for their own use and the tenant asked the landlord if all the conditions of sale had been removed. The tenant testifies that the landlord's response to this was that he had a cheque in his pocket. The tenant testifies that the landlord did return the tenants rent for January in compensation for the Notice. The tenant testifies that she went to the land title registry to do a search to determine who were the owners of the property and as of March 01, 2013 this registry still has the landlords as the registered owners of the property.

The tenant testifies that as the landlord did not have all the conditions for the sale of the property completed at the time the Notice to End Tenancy was issued the tenant seeks to recover compensation equivalent to two months' rent to the sum of \$2,200.00. The tenant also seeks to recover the costs incurred for the landlord registry search of \$25.00.

The tenant testifies that throughout the tenancy the landlord has always cleared the snow from the driveway or paid someone to do this work. The tenant testifies that after a heavy snowfall the tenant contacted the landlord to see if he was still going to clear the snow or should the tenants ask the new owners who were occupying the main house. The landlord said he would send someone round to clear the snow however the landlord failed to do so and the tenant testifies that she could not get her car out of the

garage for two weeks and the tenants had to use their four by four vehicle. However due to the driveway this vehicle incurred some damage to the gearbox by having to maneuver the vehicle backwards and forwards and having to engage and disengage the gears. The tenant testifies that the vehicle was mechanically sound before this damage occurred and the tenant has provided a copy of the receipt for the repair of this vehicle. The tenant seeks to recover the amount of \$297.37 from the landlord for this repair work.

The landlord disputes the tenant's claims but agrees that he had asked the tenants to sign a mutual agreement to end the tenancy after entering into a lease to own agreement with tenants who wanted to purchase the property. This agreement also included the carriage house for those tenants own use. The landlord has provided a copy of this agreement in evidence. The landlord testifies that this tenant was the one who filled in the Two Month Notice and put the landlords name on this. The landlord testifies that they wanted to tie up some other details so also added another mutual agreement to end tenancy as an addendum to the Two Month Notice and the tenants did sign this form to agree to move from the rental unit on January 31, 2013. The landlord testifies that these documents were signed by the parties in good faith.

The landlord testifies that as part of the lease to own agreement with the other tenants/purchasers one of the conditions was that the other tenants/purchasers wanted these tenants to vacate so the tenants/purchasers could view the carriage house. The tenants/purchaser had a two year option to purchase the property and rent paid was to be deducted from the purchase price. If they had failed to pay rent then the deal would have been quashed. The tenants/purchasers gave the landlord a letter requesting that the tenants' vacate the carriage house and this was given to the tenants.

The landlord testifies that the landlord's title deed does not show a lease to own purchase until the lease to own agreement is satisfied after two years. This lease to own agreement is a vehicle to enable the landlord to sell the property after it has been on the market for two years.

The landlord disputes the tenant's claim for repair costs to their vehicle. The landlord testifies that he did clear the snow during the tenancy after a heavy snowfall but this was never as part of the tenancy agreement. The tenant also shoveled snow on occasion. The landlord testifies the tenants have not shown how having snow on the driveway, damaged their four by four vehicle or how that is the landlords responsibility.

The tenant cross examines the landlord and asks if all the conditions of sale were removed before the landlord served the tenants with a Two Month Notice and did the landlord ever ask the tenants for access so the purchasers could view the carriage house. The landlord responds No he only asked the tenants to provide some up to date pictures of the carriage house. The tenant asks the landlord if the tenant had asked if the conditions had been removed and did the landlord state "well I have a cheque in my pocket". The landlord responds that he does not recall that conversation.

The tenant asks the landlord if the tenant had called the landlord about getting someone to remove the snow from the driveway. The landlord responds that yes the tenant had called but the landlord wanted to look at the driveway first. The landlord states that the other tenants/ purchasers liked having snow on the driveway and it was not an issue for them. The landlord states that he paid the tenants money to look after the property. The tenant asks the landlord if the tenant had said she could not get her car off the driveway. The landlord responds that he has driven cars on the driveway with snow and did not agree to always clear the snow from the driveway.

The landlord cross examines the tenant and asks if the tenant read the mutual agreement to end the tenancy before signing it. The tenant responds that yes she did but it is the landlords due diligence to know the *Act*. The landlord asks the tenant if the tenant initiated the Two Month Notice and did the tenant fill in the details incorrectly. The tenant responds that yes she did but did not notice the details were incorrect.

The tenant testifies that the lease to own agreement is void as only one of the purchasers has signed the agreement and the other purchaser was the one who signed the letter asking the tenants to vacate the carriage house.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation equivalent to two months' rent due to the Two Month Notice. I find having reviewed this Two Month Notice that the Notice is an invalid document as it contains the landlords name in the space required for the tenants names and does not include either of the tenants' names on the document. In order for a document of this nature to be valid it must be complete and contain the names of both tenants who have been served with the Notice. I therefore find the tenants did not have to vacate the rental unit in accordance with the Two Month Notice. I further find the tenants also signed a mutual agreement to end the tenancy as part of an addendum to the Notice. The tenant agrees that she read and signed this document therefore I must find that this mutual agreement is a valid document. Consequently, as no valid Two Month Notice to End Tenancy is in place I find it was the tenants' choice to move from the rental unit and therefore the tenants are not entitled to two months compensation if the reason given on the notice has not been fulfilled by the landlord. This section of the tenant's application for compensation of \$2,200.00 is therefore dismissed.

With regards to the tenant's claim to recover the sum for \$25.00 for costs incurred for the land registry search; If a tenant incurs costs associated with obtaining evidence for a hearing then the tenant must bear this cost as there is no provision under the *Act* for costs of this nature to be awarded. This section of the tenants claim is therefore dismissed.

With regards to the tenants claim to recover the sum of \$297.37 from the landlord for a repair to the tenants vehicle; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have reviewed the evidence and testimony before me and find the tenant has shown the cost to have the vehicle repaired; however, I am not satisfied that this damage to the tenants vehicle happened solely because of the landlords actions or neglect in not removing snow from the tenants driveway. The tenants have provided no evidence to determine that this was the cause of the damage or that there was an agreement between the landlords and tenants that the landlord would clear the driveway after a heavy snowfall. Even if the landlord had done this on previous occasions if no agreement is in place to show that this is the landlord's sole responsibility then the tenants should have taken reasonable precautions to ensure their vehicle could manage to navigate the snow in the driveway. This section of the tenants claim is therefore dismissed.

Conclusion

The tenant's 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: May 23, 2013

Residential Tenancy Branch

