



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, MNDC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to dispute an additional rent increase, to cancel a Notice to End Tenancy for the Landlords' use of the rental unit, for money owed or compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The Tenants had applied to cancel a two month Notice to End Tenancy for the Landlords' use of the rental unit. On the other hand, the Landlords were of the opinion that the Tenants had given notice they would vacate the rental unit at the end of the school year in 2013.

After having examined the evidence and having heard the testimony, I explained to both parties during the hearing my finding that neither party had actually given a Notice to End Tenancy that complied with the Act.

Although the parties had exchanged several emails and discussed different times when the tenancy **might** end, I find there has been no Notice to End Tenancy given by either party in compliance with the Act, and there was no meeting of the minds as to when the tenancy might end. For example, the Landlords are unable to end the tenancy to have

a nephew move into the rental unit, and the parties did not come to a mutual agreement on an end date for the tenancy. For these reasons, I dismiss the portion of the Tenants' Application dealing with the request to cancel a Notice to End Tenancy. This tenancy will continue until ended in accordance with the Act.

Both parties are advised to contact an Information Officer at the Branch for information on how to end a tenancy. I also note that the parties may come to a mutual agreement to end the tenancy, and the Branch supplies a form for that purpose on the website or at an appropriate office.

Issue(s) to be Decided

Has there been an additional rent increase, and if so, are the Tenants entitled to a refund?

Are the Tenants entitled to monetary compensation for damage or loss under the Act?

Background and Evidence

The Tenants took possession of the rental unit in March of 2009, at which time the subject property was owned by a different landlord. The Tenants are a single mother, her child, and the brother of the mother; three persons in total.

The current Landlords purchased the property and took over the tenancy on or about May 12, 2010.

The rental unit property contains an upper and lower portion. There is a suite in the basement, which is apparently self-contained, having two bedrooms, a bathroom and a kitchen.

The upper floor and an attic type loft are above the basement suite. The upper floor of the rental unit contains two bedrooms, a kitchen and a bathroom. There is apparently a bedroom in the attic style loft. The rent payable for the entire rental unit property in April of 2012 was \$2,100.00.

The parties appear to have enjoyed a successful tenancy relationship for most of the tenancy, until certain events took place, as described below. In fact, the relationship was such that the Landlords and the Tenants discussed the Tenants moving into a new building which was to be built by the Landlords, as it was contemplated that the subject rental unit building would be torn down.

On or about May 25, 2012, the appearing Tenant wrote an email to the Landlords explaining that they had troubles finding a roommate to share rent with, referring to someone to rent the basement suite portion. The Tenant explains that they can afford all the rent, but it is stressful to make ends meet, and they have had to seek help from their parents for other items. The Tenant further explains it is difficult finding a roommate as most need a year lease for stability. The Tenant suggests that if they could agree with the Landlords on a two year tenancy, they would fix the issues with the property and requests the rent be reduced to \$1,400.00, "... due to the fact we have no roommate."

On or about May 26, 2012, the Landlords replied to the Tenants that they would be starting the new house construction in approximately nine months to one year. The Landlords offered to lower the rent to \$1,500.00 per month, "... until that time ..."

The rent paid in June of 2012 and for several months after, was \$1,500.00 per month. During the hearing the parties agreed that the rent was returned to \$2,100.00 around February of 2013, and \$2,100.00 in rent was paid for March 1, 2013 and following.

According to the written submissions of the Tenants, on or about September 13, 2012, a sewer back up occurred and a portion of the basement suite was flooded. The Tenants' evidence was that the Landlords were informed of the flood around five or six days later. The Landlords and a restoration company attended the rental unit on September 20, 2012.

One of the Tenants, the brother of the appearing Tenant, had been using one of the bedrooms in the basement. According to the appearing Tenant, her brother moved from the basement into the bedroom of her son and did not return to the basement bedroom until December 20, 2012. The Tenant testified that her brother did not use the kitchen in the basement at any time, although he used the washroom facilities when he was occupying the basement.

The issue of repairs being performed in the basement became somewhat complex, as the father of the Tenants performed some of the restoration work, and there were allegations about the time it took, the quality of this work and a lien being improperly placed on the property. However, it is not relevant to these proceedings to recount the entire history of the repairs in the basement. It is enough to set out that one of the Tenants was displaced from the basement bedroom for a period of approximately three months.

The Tenants are claiming they should be compensated for, "... being out of the house during the restoration of the lower level of the house." They had to move the furniture from the basement to the garage on the property. The Tenants also claim they were never informed whether or not building permits were obtained or about the results of testing for asbestos. The Tenants claim \$2,100.00 in total. The particulars of their claim are,

"Money owed for compensation on flood \$2,100, rent increase at \$1,200 plus \$600 each additional month."

[Reproduced as written.]

In reply to the Tenants' claims, the Landlords testified that it was their understanding that the rent was reduced to assist the Tenants. The Landlords testified they did not really care if the Tenants sublet the basement, although there was an intention to return the rent to the rate of \$2,100.00 a month in about February or March of 2013.

The Landlords asserted that the tenancy agreement was only entered into with the appearing Tenant and her brother is not on the agreement. The Landlords explained that they were under the impression that the Tenant's brother was using the loft as a bedroom, as that was the situation when they purchased the property. They were unaware he was sleeping in the basement.

The Landlords testified that they were informed by the Tenants there was no damage done to their personal property as a result of the flood. The appearing Tenant agreed no damage to their personal property had occurred.

The Landlords testified that they had already reduced the rent for the Tenants in the amount of \$5,400.00, and it was always their plan to have the house "knocked down" someday. The Landlords submit that the Tenants have already benefitted from a reduced rent.

The appearing Tenant replied that after the Landlords took over the property they advised her that their house inspector for the purchase had said the attic loft was not fit for occupation. The Landlords replied that they had informed the Tenants that they would rather not have someone in the loft space, but did not say it was unfit.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenants' claims must be dismissed without leave to reapply, for the following reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Here the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

In this instance I find the Tenants failed to prove the Landlords instigated an additional rent increase. I find that the Landlords agreed to reduce the rent for a period of time, and it was understood by both parties that the rent would return to the original amount at some point. I find the rent was never increased beyond the original amount required, and therefore, there was no additional rent increase.

I also find the Tenants failed to prove the Landlords breached the *Act* or tenancy agreement. There was no evidence from the Tenants that the Landlords caused the flood, and no evidence that the Landlords delayed any repairs to the basement. In fact, I find the Landlords acted quickly once informed of the flood and they communicated effectively with the Tenants during the restoration period.

This also leads me to find the Tenants have insufficient evidence to prove they suffered a loss due to a breach of the *Act* or tenancy agreement by the Landlords.

I find that, in fact, the Tenants benefitted from a rent reduction in the amount of \$5,400.00 from June of 2012 to February of 2013, which covered the entire time of any

negative effects resulting from the flood. Therefore, I find the Tenants had already enjoyed a rent reduction in an amount which surpassed any minor inconveniences they may have suffered due to the flood.

I also find there was adequate accommodation for the Tenants in the upper portions of the rental unit. This is supported by the Tenants' own evidence that they had nearly rented out the basement portion of the rental unit to a third party, to supplement their rent payments to the Landlords.

For these reasons I dismiss the claims of the Tenants without leave to reapply.

Conclusion

The Tenants' claims are dismissed without leave to reapply. The Tenants had insufficient evidence to prove the Landlords breached the Act or the tenancy agreement. The Tenants failed to prove that they suffered a loss beyond the rent reduction they benefitted from for the duration of the restoration of the flood damaged portions of the basement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 14, 2013

Residential Tenancy Branch