



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. The hearing originally convened on April 18 via telephone conference call. On that date, the landlord asked to see the original notice to end tenancy submitted by the tenants as she had questions about its authenticity. The hearing was adjourned and reconvened as a face to face hearing on May 16. Both parties participated in the hearing on both dates, the male landlord being represented by the female landlord.

At the May 16 hearing, the landlord stated that she wanted the document in question to be viewed by a certified graphologist. After hearing the testimony of the parties, I determined that the testimony of a graphologist would be of limited value as I did not believe that a graphologist's opinion could provide sufficient certainty on whether the small portion of the document in question had been forged and as ultimately I had to make my decision based on a finding of credibility.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenants were already living in the rental unit in February 2010 when the landlords purchased the residential property. The parties further agreed that on or about September 29, 2012, the parties met at a Starbucks at which time the landlords served the tenants with a 2 month notice to end tenancy. The tenants moved out pursuant to that notice on or about November 30, 2012. In dispute is the reason given on the notice.

The parties agreed that the residential property was demolished in December 2012. The tenants submitted a copy of the notice to end tenancy (the "Tenants' Copy") on

which the second page indicates that the reason for ending the tenancy is that the landlord or close family member intends to occupy the rental unit. The initials "RS" are beside that section of the Tenants' Copy.

The landlord submitted a copy of the notice (the "Landlords' Copy") which indicates that the reason for ending the tenancy is that the landlord has all necessary permits to demolish the rental unit. That section of the notice is also initialled.

The parties agreed that when they met at Starbucks on September 29, the landlord had with her 2 copies of notices. They were not photocopies, but documents which the landlord had filled out separately. The tenants testified that the landlords handed them the Landlords' Copy and asked them to sign it. The tenants claimed that when they looked at the second page of the Landlords' Copy, they saw that the landlords had checked the box indicating that a family member would occupy the rental unit. The tenants signed the Landlords' Copy, returning it to the landlords, and left Starbucks with the Tenants' Copy.

The tenants accused the landlords of creating a different second page of the notice to submit into evidence in order to escape liability for not using the rental unit for the purpose stated on the notice. The landlords accused the tenants of manufacturing a different page and forging the landlord's initials to create a bogus claim.

The landlord examined the page in question in the Tenants' Copy and insisted that the initials in question were not hers. Since the landlords did not photocopy the notice but filled out two separate copies, I asked the landlord whether it was possible that she had mistakenly checked a different box on the Tenants' Copy. The landlord insisted that there was no possible way she could have made such an error.

The landlord testified that at the meeting on September 29, she and her husband clearly explained to the tenants that they intended to demolish the rental unit and rebuild so their son could reside in the new home. She provided evidence that 2 days prior to meeting with the tenants she had submitted her building plans to the city for approval and had requested a demolition permit. The landlord acknowledged that the plans had not yet been approved nor the demolition permit issued at the time the landlords met with the tenants but argued that it was not necessary to have the permit in hand at that time as long as the city had accepted her application for the approvals and permit. The landlord testified that the tenants had asked whether they could remove certain fixtures such as mouldings from the home and stated that this proved that the tenants were aware of their plans for demolition.

The tenants testified that on September 29, the landlords merely told them that their son would be moving into the rental unit. They further testified that they did not become aware that the house was scheduled to be demolished until several weeks later, when a surveyor attended at the property and stated that this was the next house in the neighbourhood to come down. It was after this conversation with the surveyor that the tenants contacted the landlord and asked whether they could salvage certain materials from the unit.

Analysis

The basis on which the tenants have made their claim is section 51(2) of the Act which provides as follows:

51. Tenant's compensation: section 49 notice

51(2) In addition to the amount payable under subsection (1), if

51(2)(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

52(2)(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

The landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

What I must determine is what the stated purpose for ending the tenancy was on the Tenants' Copy.

Having reviewed the evidence and testimony of the parties, I have found the tenants to be completely credible whereas I had doubts about the landlord's credibility. At the hearing, the landlord was insistent that there no possibility that she could have checked different boxes on each of the notices in error. I find this refusal to accept the possibility of error to be questionable.

The landlord argued that because the tenants asked if they could salvage mouldings and other fixtures from the rental unit, this proved that they were aware of the demolition, yet the landlord did not dispute that this request came after the tenants had

spoken with surveyors some time after the notice had been served. I find the landlord's argument on this issue to be misleading.

The landlord argued that she had all permits and approvals in place prior to serving the notice, yet the evidence clearly shows that she did not have the demolition permit or building approval in hand on that date. I find the landlord's argument on this issue to be misleading.

I find it more likely than not that the Tenants' Copy is indeed the copy which was given to them on September 29. The intensity of the ink on each of the pages is the same, the creases and distress to the paper is in the same place on each of the pages and I find the check mark and initials to be sufficiently similar to those on the second page of the Landlords' Copy. I noted that while the initials on the Landlords' Copy show a distinct "R" and "S", the initials on the Tenants' Copy were almost on top of each other, although each of the letters appears to be the same. I find it unlikely that the tenants, if trying to forge the initials, would have crowded the initials instead of spacing them as they were on the Landlords' Copy as it seems more likely that a forger would try to identically duplicate the sample before him/her.

I find that the notice given to the tenants indicated that the reason for ending the tenancy was not to demolish the property, but because the landlords' close family member intended to occupy the rental unit. I find that the landlords did not take steps to accomplish this purpose within a reasonable period after giving the notice and in fact made it impossible to fulfill the intention stated on the notice by demolishing the unit.

I find that the tenants are entitled to recover \$3,000.00, which is double the \$1,500.00 monthly rent payable under the terms of the tenancy agreement, and I award them that sum. As the tenants have been successful in their claim, I find that they are entitled to recover the \$50.00 filing fee paid to bring their application for a total entitlement of \$3,050.00. I grant the tenants a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are awarded \$3,050.00.

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 17, 2013

Residential Tenancy Branch

