



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on March 25, 2013, neither of the named landlords attended. The tenant testified that the first named landlord is the agent of the rental unit and provided a Canada Post receipt showing that the documents were sent on that date. The tenant further testified that the tenant did not have an address for other named landlord and included a hearing package for that landlord in the envelope sent by registered mail on March 15, 2013. In the circumstances, I find that the tenant has served the first named landlord in accordance with the *Residential Tenancy Act*, but not the second named landlord, and the claim as against the second named landlord is hereby dismissed.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on March 1, 2008 and ended on February 2, 2013 after the landlords had issued a notice to end tenancy for landlord's use of property. Rent in the amount of \$1,040.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On January 31, 2008 the landlords collected a security deposit from the tenants in the amount of \$440.00 which is still held in trust by the landlords. A move-in condition inspection report was completed by the parties on March 1, 2008 but the tenants did not receive a copy of it from the landlords, and no move-out condition inspection report was completed.

The tenant further testified that the landlords had issued a notice to end tenancy for landlord's use of property but was not in the proper form and the tenant refused to move out. The landlords then served 2 more, the first of which was also incorrect. The tenants received the latter one which was provided for this hearing. The notice is dated December 10, 2013 and contains an expected date of vacancy of February 28, 2013. The reason for ending the tenancy was stated to be that: All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The notice appears to be in the approved form and contains an address of the rental unit, an address for the landlord and is signed and dated.

The tenant seeks compensation in that the purchaser has not used the rental unit for the purpose stated in the landlord's notice to end tenancy. The tenant testified that a check with the City building inspector shows that a stop work order has been issued for work being completed on the property without a proper building permit, and currently the rental unit is vacant. Further, the rental unit was sold to an investment company, which is evidenced by a copy of an email dated December 8, 2012 from the landlord to the tenants.

The tenant has not provided the landlord with a forwarding address in writing, other than in a text message, but there is no evidence before me that the landlord has received it.

The tenant provided copies of 8 text messages all of which relate to showings of the rental unit with a realtor and the tenant testified that at no time were the tenants provided with at least 24 hours notice as required by the *Residential Tenancy Act*,

despite requests from the tenants to do so. The tenant has requested a monetary order for inconvenience at \$50.00 per day.

The tenant also requests a monetary order for return of the \$440.00 security deposit.

Analysis

Firstly, dealing with the security deposit, the *Residential Tenancy Act* states that if a tenant does not provide the landlord with a forwarding address in writing within one year after the end of the tenancy, the landlord does not have to return it to the tenant. In this case, the tenants have not provided the landlord with a forwarding address in writing, and therefore, I decline to order the landlord to return it. The tenants are at liberty to provide the landlord with a forwarding address in writing, and if the landlord fails to return it, the tenants are at liberty to make a further application for dispute resolution, and I dismiss this portion of the tenants' application with leave to reapply.

With respect to the tenants' application for compensation for realtor showings with less than the required 24 hours notice, I have reviewed the text messages, and although some are difficult to read, I find that the tenants agreed to those showings, and the tenants have failed to establish that any loss or damage was suffered as a result.

With respect to the tenants' application for compensation for the purchasers failing to use the rental unit for the purpose stated in the notice to end tenancy, I am satisfied that the tenants have established that, however, generally a tenant would be entitled to compensation from a purchaser. In this case, the landlord has failed to attend the hearing to provide evidence showing that the purchaser requested in writing that the landlord issue the notice to end tenancy. I find that the tenants have established a monetary claim as against the landlord in the amount of \$2,080.00, being double the monthly rent pursuant to Section 51 of the *Residential Tenancy Act*.

The tenants have served only one of the 2 named landlords and the tenant stated that the tenant does not have an address for the other named landlord, and that the landlord served takes no responsibility stating that the other landlord is solely responsible. I note that the notice to end tenancy issued by the landlord(s) has the name of the second named landlord with an address for service that is not the same address as stated in the Tenant's Application for Dispute Resolution. The tenant's application as against that landlord must be dismissed.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenants' application for a monetary order for compensation for realtor showings with less than the required 24 hours notice is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,130.00 as against one landlord only.

This order is final and binding on the parties and may be enforced.

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: July 03, 2013

Residential Tenancy Branch