



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 19, 2013, by the Landlord, to obtain a Monetary Order to keep the security deposit, for unpaid rent, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenants confirmed receipt of the Landlord's evidence; however, the Landlord stated that she had not received a copy of the Tenant's evidence and noted that she is located at head office in a different city than the rental unit.

The Tenants testified that they personally served their evidence to the Landlord's building in the city in which the rental unit is located on March 3, 2014. The Agent, hereinafter referred to as Landlord, requested that their site administrator be added to the hearing to provide witness testimony. The site administrator confirmed that the Tenants' evidence had been received at their office.

Based on the above, I find the Tenants served their evidence upon the applicant Landlord and the *Residential Tenancy Branch* in accordance with the *Residential Tenancy Branch Rules of Procedure # 4*. Accordingly, I considered all documentary evidence in my decision. The Tenants provided testimony which included a summary of their documentary evidence for the benefit of the Landlord who had appeared at the teleconference hearing and who was from another location.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitled to a Monetary Order, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that she was an occupant of the rental unit for the month of October 2011 and then took over the tenancy as of November 1, 2011. She was required to pay \$1,090.00 per month which included one parking stall and they paid a security deposit of \$515.00.

The Landlord testified that they purchased this building on September 1, 2013, and the tenancy agreement provided in her evidence is what was turned over to them from the previous landlord. Their records confirm that a security deposit of \$515.00 had been transferred to them for this tenancy when ownership was transferred. The Landlord has since returned the security deposit to the Tenants.

When the Landlord began to present her claim she stated that the Site Manager at this location was no longer with their company. He left their employment as of December 31, 2013.

The Landlord stated their claim of \$501.69 is for lost rent for half of November 2013. She indicated that the Tenants' notice to end their tenancy was dated October 1, 2013, and if it was to be effective October 31, 2013, it should have been received by their office on September 30, 2013. They advertised the unit right away and on October 18, 2013 they entered into a new tenancy agreement that was effective November 15, 2013 for \$1,185.00 per month. Upon review of the tenancy agreement provided in evidence the Landlord could not explain why the agreement shows rent of \$1,185.00 plus \$25.00 for parking as this building includes parking in the rent.

The Tenants testified that they had provided late notice; however, they were willing to change that notice if they could not find a replacement tenant. They summarized their written submission which included a chronological list of events, by date, telephone records, e-mails, and a picture of a text message. The Tenants argued that they were in contact with the Site Manager and the Landlord's local office staff shortly after they submitted their notice, at which time they were told they needed to change their notice to the end of November 2013 or work to find a replacement tenant.

The Tenants submitted that they immediately posted an advertisement on the internet and began showing the unit, as did the Landlord's staff. They continued to be in contact with the Landlord's staff and on October 18, 2013, they were told their unit had been re-rented as of November 1, 2013. They continued to be in contact with the Site Manager and local office staff and at no time were they told the new tenancy was not going to

start until mid November. They cleaned up the unit, as per the Landlord's move out requirements and have cashed their security deposit that was refunded to them.

The Landlord's Witness, the current Site Administrator was added into the hearing. He provided affirmed testimony that he had nothing to do with these Tenants or their tenancy and that the former Site Manager would have been the person who dealt with them.

In closing, the Landlord had nothing further to add to her claim. The Tenants summarized their submission stating that they are not responsible to pay this claim as they had an agreement with the Landlord's staff. The Tenant's argued that the Landlord's staff provided them with mis-information which caused them to stop their search for another tenant.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

I favor the Tenants' evidence who stated they had been told by the Site Manager that the Landlord had re-rented the property as of November 1, 2013, as supported by their written submission and evidence. I favored the Tenant's evidence over the evidence of the Landlord who was not able to provide evidence regarding what transpired when this unit was re-rented, because her staff was no longer employed with them.

I favored the evidence of the Tenants over the Landlord, in part, because the Tenants' evidence was forthright and credible. The Tenants readily acknowledged that they provided late notice to end their tenancy. In my view the Tenants willingness to admit fault when they could easily have stated they provided the former Site Manager their notice on September 30, 2013, lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

The Landlord's Agent has not yet seen the Tenants' evidence; therefore, I do not find it a mere coincidence that the Landlord testified that they entered into the new tenancy agreement on October 18, 2013, and the Tenants' evidence included a text message that was sent October 18, 2013, stating the unit had been re-rented. Rather, I find the Tenants' explanation that the parties had entered into agreement that they would attempt to re-rent the unit, along with the Landlord, effective November 1, 2013, and they stopped when they were told the Landlord re-rented the unit, to be plausible given the circumstances presented to me during the hearing.

I appreciate that the Landlord's Agent has a difficult job in managing this file from a remote location, with documents passed down from former owners and past employees; however, there is insufficient evidence to prove the Landlord took steps to mitigate their loss. They could have continued to have their staff and these Tenants search for tenants that would take the unit November 1, 2013, rather than providing partial or mis-information to the Tenants, causing them to stop searching. Accordingly, I dismiss the Landlord's claim, without leave to reapply.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, 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: March 14, 2014

Residential Tenancy Branch

