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## Background and Evidence

The parties agreed that this tenancy originally started in August, 2010 after the tenants had renovated the unit for the landlord. At that time the parties had a verbal agreement. The landlord lived in one side of the duplex and the tenants lived in the other side. On April 01, 2013 the parties entered into a written tenancy agreement. Rent for this unit was \$1,600.00 per month due on the 1<sup>st</sup> of each month. The tenancy agreement states that the tenants paid a security deposit of \$600.00 to the previous agent. The tenants testified that this was actually paid in cash to the landlord at the start of their tenancy in 2010. The tenants testified that no receipt was provided by the landlord as they were all friends at the time. LC testified that there is no evidence that the security deposit was paid and this was only documented on the tenancy agreement after LC was informed by the tenants that they had paid this amount.

The tenants testified that the landlord ended the tenancy with a Two Month Notice for landlord's use of the property (the Notice). This was served upon the tenants on May 30, 2014 with an effective date of July 31, 2014. The tenants were compensated one month's rent due to the Notice. The tenants testified that the Notice stated that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenants testified that a friend of the landlords actually moved into the tenant's side of the duplex and was there unpacking when the tenants arrived to meet the landlord's agent to do a walkthrough of the unit on August 23, 2014.

The tenants seek compensation from the landlord equivalent to two months' rent as the unit was not used for its intended purpose.

The tenants testified that they provided the landlord's agent with their forwarding address by text message on August 09, 2014. The tenants did not agree the landlord could keep all or part of the security deposit and as the landlord has not returned the

security deposit the tenants seek to recover double the security deposit to the amount of \$1,200.00.

The tenants also seek to recover the filing fee of \$50.00 from the landlord.

LC testified that he was hired by the landlord as a property manager in January, 2013 before the landlord's health took a turn for the worse. After reviewing the paperwork for this rental unit LC found that there was no written tenancy agreement so LC and the tenants put one in place and this was signed by the parties. The tenants had been family friends for 20 years and informed LC that they had paid a security deposit of \$600.00 so LC documented this on the tenancy agreement.

LC testified that the landlord had been in hospital for three months with dementia and when he returned home he was dependent on 24 hour care. The landlord's sons had been paying for nursing care and wanted to avoid putting their father in a nursing home. A care aid worker moved into the landlord's unit with her family to provide full time care for the landlord in his own home. When the care aid realized she could not provide 24 hours care on her own, the landlord's son asked the landlord's friend TM to move into the tenants' side of the duplex to help take care of their father.

The tenants were given a Two Month Notice to End Tenancy for this purpose. The landlord has his furniture in the tenant's side of the duplex and TM moved in to the unit in September, 2014. The landlord is now able to visit his long term friend TM each afternoon and TM extends the care provided by the care aid. TM does not pay rent but does pay for her own utilities.

IP testified that TM has been friends with his father for the past 15 years and has always taken care of his father's needs and continues to do so now his father has severe advanced dementia. IP testified that his father visits and lives with TM during the day and sleeps in the other side of the unit with the care aid and her family at night. As the care aid has a family this only leaves his father one small room to sleep in. IP

therefore disputed the tenants' claim for compensation as the unit is used by the landlord.

The tenants testified that they always had some of the landlord's furniture in their unit which included a grand piano and a dining table and chairs along with other items. The tenants testified that when they lived there they helped out with the landlord because his son was away a lot. When they went to the unit in August with the landlord's agent, they saw the same furniture that belonged to the landlord and the rest was TM's furniture.

LC testified that he did meet with the tenants at the unit but a walkthrough was not completed in August as the landlord had not completed a move in condition inspection at the start of the tenancy. TM did not move into the unit until September, 2014 and the landlord's agents were arranging to move some of the landlord's furniture into the unit. At that time there was only the landlord's furniture in the unit and not TM's.

LC asked the tenants what kind of furniture was in the unit. The tenants responded that TM was there unpacking some boxes and there were dishes in the kitchen cupboards.

IP testified that the unit was furnished with items from IP's furniture in storage.

The landlord's agent calls their witness TM. TM testified that she has been friends with the landlord for 40 years. TM now lives next door to the landlord and the landlord comes over for lunch or they go out for lunch each day. They do get together during the day but in the evenings the landlord goes back next door to bed. TM testified that she moved into the unit on September 24, 2014 and she did bring some of her furniture but did not have much so is using the landlords and the landlord's son's furniture.

The tenants asked the witness if the witness is sure of the date she moved into the unit. The witness responded that it could have been September 23, 2014. The tenants asked the witness if the witness can remember seeing the tenants at the unit on August 23, 2014. The witness responded that she does not remember that. The tenants asked the

witness if the witness remembers that the tenants walked in to do an inspection and the witness was there unpacking with a friend. The witness responded that she cannot remember. The tenants asked the witness where her furniture is from her previous place. The witness responded that she did not have much but brought what she had with her to the duplex.

## Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants' claim to recover double the security deposit; In this matter the tenants have the burden of proof and must show that the tenants sent the landlords their forwarding address in writing. The tenants testified that the tenants sent their forwarding address by text message to the landlord's agent on August 09, 2014. Under the provisions of the *Act* this method of providing a forwarding address is not sufficient as it must be in writing.

At the hearing the tenants stated that the address on the application for Dispute Resolution is their present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today March 26, 2015. Allowing time for the landlords to receive this decision by mail, the landlord have until April 15, 2015 to either return the security deposit to the tenants or deal with it under s. 38 of the *Act*. If the landlord fails to comply, the tenants are at liberty to file a new application for Dispute Resolution after April 15, 2015 to recover double the security deposit.

With regard to the tenants' application for compensation equal to two months' rent. I have considered both arguments in this matter and refer the parties to s. 51(2) of the *Act* which states that in addition to the amount payable to the tenants in compensation for receiving the Two Month Notice, if 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 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, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenants argued that the landlord served the notice and the tenants vacated the unit because the landlord or a close family member were going to occupy the rental unit; the landlord's agents argued that a close friend of the landlord now occupies the unit and the landlord comes each day to stay in the unit and only returns to his own home to sleep.

I am not satisfied that the landlord's agents' arguments are in good faith. The landlord's friend clearly occupies the rental unit; whether or not rent is exchanged TM has the utilities in her name and resides in the unit. The landlord may come to visit TM each day and spend a significant amount of time in the unit but this would not qualify as residing in the unit as the landlord continues to reside in the unit next door. While I appreciate the difficulties for elderly people with health concerns that require round the clock care; If the landlord does not occupy the rental unit then I must find that the unit has not been used for the stated purpose given on the Notice. Consequently, I find in favor of the tenants' claim to receive compensation from the landlord equivalent to two months' rent to an amount of **\$3,200.00** pursuant to s. 51(2) of the *Act*.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,250.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 27, 2015

Residential Tenancy Branch

