



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, FF

For the landlord - MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenants for the cost of this application.

During the hearing the landlord withdrew his application as the landlord stated he had only made a cross claim for the same amount. The hearing therefore proceeded with the tenants' application.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2014. The male tenant was to reside in the basement unit and the female tenant was the mother of the tenant and had co-signed the tenancy agreement. Rent for this unit was \$1,025.00 per month due on the 1st of each month. The tenancy ended on December 27, 2014.

The tenant testified that the landlord served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property on October 17, 2014. This Notice had an effective date of December 17, 2014 and informed the tenant that "a family member is moving in and more private space is needed. The upper level is not conducive for a family setting as it would cause overcrowding, inconvenience and lack privacy. The basement apartment now occupied by you is of the required size and suitable for this purpose". The tenants have provided a copy of the Notice in documentary evidence.

The tenant testified that they did not pay rent for December due to receiving this Notice and vacated the rental unit in accordance with the Notice. The tenant testified that the landlord had been living in the unit upstairs with other tenants. The other upstairs tenants had left the property and the landlord's wife was living there. The tenant testified that they later found out from the landlord's property manager that a door had been put between the two units and a stove was put into the basement unit. The property manager had shown the tenant's unit at least twice, once with permission and once without the required notice or permission from the tenant. The tenant has no idea if the unit had been shown on other occasions without notice.

The tenant testified that they do not believe that the landlord has used the unit for its intended purpose since the tenant vacated. The landlord's wife was living upstairs with the landlord and the property is now up for sale. The tenants therefore seek to recover compensation equal to two months' rent to an amount of \$2,050.00.

The landlord testified that the house has been up for sale since last October. The tenants may have mistaken the realtor conducting viewings of the property for the owner as a property manager. The landlord testified that he rented the whole house from the owners and sublet the basement unit to the tenant. Not long after the tenant moved in, the landlord's wife was able to move to Canada from Jamaica and cleared immigration. The landlord therefore served the tenant with the Two Month Notice as the landlord and his wife intended to move into the basement unit as the landlord had been living in the upper unit with three other men. The landlord felt this was not conducive to have his wife living in the upper unit with so many men so they decided to live in the basement unit.

The owners put a stove in and at that time a For Sale sign went up outside. The landlord testified that he continues to live in the basement unit with his wife and is still the legal tenant for the upstairs portion of the house. The landlord testified that he did not intend to inconvenience the tenant and apologises for the inconvenience suffered but it was due to the immigration process which allowed the landlord's wife to be able to come and live in the unit with the landlord. The landlord therefore disputed the tenants' claim for two months' rent as the unit is being used for the purpose as stated on the Two Month Notice.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant has testified that the landlord has not used the basement unit for the purpose as stated on the Two Month Notice; I have reviewed the Two Month Notice and find this is an outdated form no longer in use; However, if the tenant relied

on the information contained within this Notice then I will consider the Notice to be valid for the purposes of the *Act*.

Section 51(2) of the *Act* allows a tenant to apply for compensation if the tenant can show that the landlord has not used the rental unit for the purpose as stated on the Two Month Notice:

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

(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

(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.

The tenants have the burden of proof to show that the landlord is not using the rental unit for the purpose as stated on the Notice. The landlord has testified that he does reside in the basement unit with his wife. In this matter I find both parties testimony to be equally probable and it is a matter of one person's word against that of the other. Without further corroborating evidence from the tenants to proof that the landlord is not residing in the basement unit then I must find that the tenants have insufficient evidence to meet the burden of proof and their application for compensation equal to two months' rent is denied.

As the tenants' claim has no merit I find the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application was withdrawn by the landlord.

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: April 01, 2015

Residential Tenancy Branch

