



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Commercial Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, 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 and for recovery of the filing fee for the cost of the application.

Both tenants and an agent for the landlord attended the hearing. One of the tenants and the landlord's agent gave affirmed testimony, and the parties have provided evidentiary material. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2014 and ended on September 30, 2015. Rent in the amount of \$1,400.00 per month was payable on the 1st day of each month and there are no rental arrears. Prior to moving in, the landlord collected a security deposit from the tenants in the amount of \$700.00 which has not been returned to the tenants. A written tenancy agreement was prepared but a copy has not been provided for this hearing. The rental unit is a house on a 40-acre parcel of land which all belongs to the owner of the rental unit.

The tenant further testified that on multiple occasions during the tenancy the owner, who lives in another province, parked his RV right next to the rental unit for several days partying with friends and using the tenant's water. The owner would also go to the door

of the rental unit asking if he could retrieve some items stored in the basement. On one occasion he told the tenants that he was having a stag party and there were random guys there drinking for 4 days. They had a fire going in the yard during a fire ban, played music all day and night and were shooting off a gun. The owner's visits started in the spring, was during a few long weekends or twice in the summer. The owner would enter the house and the tenant didn't feel safe. The tenants were not able to use the property because the owner was using it, which wasn't fair. The tenants complained about it to the landlord's agent, who replied that it wouldn't likely happen again, but later texted the tenants stating the owner would be attending again. The tenant replied that it was not okay. A few days later, the tenants were served with a notice to end the tenancy.

The tenant has not provided a copy of the notice to end the tenancy given by the landlord, but testified that it is a 2 Month Notice to End Tenancy for Landlord's Use of Property and is dated July 29, 2015 with an effective date of vacancy of September 30, 2015. The reason for issuing it states 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 notice was posted to the door of the rental unit and the tenants received it on or about July 29, 2015.

The tenants did receive a free month of rent as compensation, however the owner has not moved into the rental unit. The tenants were told the owner would be using the rental unit for the winter and would be moving in the middle of winter.

On October 14, 2015 the landlord's agent texted the tenants saying that the owner was refusing to return the security deposit due to damages and other costs; the owner was taking down a house beside the rental unit and accused the tenants of holding up contractors. On December 3, 2015 the landlord's agent asked the tenants for a mailing address, stating that the landlord needed it to respond to the tenants' application for dispute resolution, and the tenant gave it to him.

The landlord's agent testified that he is an agent for the owner and asked the owner to reply to the tenants' application, and the evidentiary material provided is the owner's response. The owner also wanted the landlord's agent to also let this tribunal know the following:

- anytime the owner visited, he gave notice to the tenants prior to;
- the owner stayed on the property 4 times from May to August, 2015. One time the tenants weren't home;
- The only time the owner entered the home was once and he asked permission to get items from the basement;

- The property is a 40 acre parcel with 2 homes, one of which was in bad shape and was subsequently demolished and that's where the owner's RV was parked;
- Over the summer the owner would use the property as his home base while in the area;
- The owner only shot 3 shots from his firearm on one occasion at night to ward off bears;
- The eviction process was not a result of the tenants' complaints, but the owner sold other property and income was freed up so he no longer needed rental income and wanted to use the rental property for his own use when he visits during winter;
- .The owner didn't move in but uses the rental unit and there are no other renters.

The landlord's agent further testified that he received the tenants' forwarding address in writing on December 3, 2015. Within 2 weeks of that, the landlord's agent texted the tenants saying that the security deposit would not be returned by the owner and didn't hear a response from the tenants to that. The owner thought the reasons given were sufficient and since the tenants didn't respond, it was felt that it was agreed, however no application for dispute resolution was filed by the owner or the landlord's agent.

Analysis

Firstly, with respect to the landlord's use of the property, the *Residential Tenancy Act* specifies how a tenancy ends. A landlord may give a 2 Month Notice to End a Tenancy for Landlord's Use of Property if the landlord has good faith intent to do whatever is stated in that notice. In this case, the landlord's reason was to occupy the rental unit but the landlord had no intention of doing that. The landlord's agent testified that the owner sold other property and no longer needed rental income and wanted to use the property when he visits the area during winter months. The parties have a contract, whether or not it is in writing, and the landlord cannot end that contract just because it is no longer convenient for the landlord. It is not sufficient to use the rental property occasionally.

I refer to Residential Tenancy Branch Policy Guideline 2 which states, in part:

"The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* allow a landlord to end a tenancy if the landlord intends in good faith to:

- provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;
- move in themselves, or allow a close family member to move into the unit;

- sell the unit and after all the conditions of sale are removed, the purchaser requests the seller issue the Notice to End Tenancy because they or a close family member intend to move in; or
- substantially renovate or demolish the rental unit, with all required permits and approvals, or convert it to another use, including a caretaker's unit, or convert it to a strata unit.

The *Act* also specifies that if the landlord fails to do so within a reasonable time after the effective date of the landlord's notice, the landlord must repay the tenant double the amount of one month's rent.

The *Act* also specifies that a landlord must return to a tenant any security deposit or pet damage deposit or make an application for dispute resolution claiming against the deposit(s) within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, unless the tenant agrees in writing that the landlord may keep a portion or all of it. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlord's agent received the tenants' forwarding address in writing on December 3, 2015 after requesting it via text message in order to serve the landlord's evidentiary material. The tenant testified that the landlord's agent told the tenants that the owner was refusing to return the security deposit, and it is not sufficient to believe that hearing nothing from the tenants was an agreement to that. In the circumstances, I am satisfied that the landlord's agent received the forwarding address in writing on that date, and the landlord did not return it or make an application for dispute resolution claiming against the security deposit. I am also satisfied that the tenants did not agree in writing that the landlord retain any portion of the security deposit.

With respect to the tenants' claim for loss of quiet enjoyment, there is no question that the owner was at the property and did not provide the tenants with their right to quiet enjoyment by camping and partying next to the rental unit. It's a large parcel of property and the owner certainly could have found a better place to camp so as to not devalue the tenancy. However, I am not satisfied that for 4 weekends or occasions substantiates a full month's rent. The tenant testified that it was for 4 days during a stag party and 2 long weekends during the summer. The landlord's agent testified that the landlord told him he was at the rental proper 4 times between May and August, 2015. I find that on a balance of probabilities the owner's behaviour devalued the tenancy by a per-diem rate of 8 days, or \$361.29 ($\$1,400.00 / 31 = \45.16 per day $\times 8 = \$361.29$).

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

The *Residential Tenancy Act* also states that:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

62 (1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In the circumstances, I find that the tenants have established a monetary claim as against the landlord for double the rent, or \$2,800.00; double the security deposit, or \$1,400.00; loss of quiet enjoyment of \$361.29; and recovery of the \$50.00 filing fee, for a total of \$4,611.29.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$4,611.29**. This order is final and binding 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: December 22, 2015

Residential Tenancy Branch

