



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing. Each gave affirmed testimony and the parties were given the opportunity to question each other.

The landlord advised that the tenant's evidentiary material wasn't received until February 12, 2017 by regular mail, but because the landlord was snowed in, the landlord did not check the mail on the previous Friday and is not certain when the package arrived. Also, one of the tenants testified that the tenants provided evidentiary material to the landlord, which was filed electronically with the Residential Tenancy Branch, and I have not received it.

The landlord has provided 2 packages, one containing 39 pages and the other containing 2 pages. The 2-page package has been submitted by facsimile, and nothing is visible except for a Canada Post receipt.

The parties agree that they have received each other's evidentiary material, and I make no orders or findings that evidence has not been exchanged in accordance with the *Residential Tenancy Act*. However, the tenants have the responsibility to ensure that evidence is received by the Branch, and since I have none from the tenants, I cannot consider it.

No further 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, and more specifically for compensation for the landlord's failure to use the rental unit for the purpose contained in the landlord's notice to end the tenancy and an overpayment of rent?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The first tenant (CA) testified that this month-to-month tenancy began on September 1, 2015 and ended on November 30, 2016. Rent in the amount of \$1,475.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$737.50 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided for this hearing by the landlord.

The landlord wanted the tenant to sign a new tenancy agreement with new terms, and when the tenant wouldn't sign the landlord got mad and said he'd get his daughter to move in.

The tenant further testified that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided by the landlord. It is dated July 12, 2016 and contains an effective date of vacancy of September 15, 2016. The reason for issuing it states: "The rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse)." The tenant testified that the landlord said his daughter was moving in. The tenant contacted the Residential Tenancy Branch and was told that it had to have a full 2 month's notice for a month-to-month tenancy, however when the tenants first took possession, the parties orally agreed to a 2 year tenancy.

Then the landlord also returned the October and November, 2016 rent cheques saying that he wanted more money.

The tenants provided the landlord with a letter on October 5, 2016, a copy of which has been provided by the landlord. It thanks the landlord for changing the tenancy

termination date from September 30 to November 30, 2016 so the tenants can move directly into the home they purchased on November 29, 2016. It also states that the tenants have been unable to come up with the \$1,800.00 per month requested by the landlord and acknowledges that the landlord had returned the cheques given for \$1,475.00 for each of October and November. The tenant offers instead of paying the extra \$650.00 of rent, to relinquish the \$737.50 security deposit, and that the landlord may use the difference of \$87.50 for carpet cleaning.

The landlord had told the tenant that he could re-rent the rental unit for \$2,000.00 per month, and then orally kept changing the effective date of the notice to end the tenancy. The tenant wrote up a Mutual Agreement to end the tenancy, and the landlord said the tenants could stay if they agreed to raise the rent by \$350.00 per month. The tenant was told by the landlord's son that the landlord's daughter was never going to move in, and the day after the tenants moved out an advertisement showed up on Craigslist for the rental unit at \$1,950.00 per month, plus utilities.

The second tenant (SV) testified that rent was paid in full for November, 2016, and the tenants paid an illegal rent increase of \$325.00, to \$1,800.00 per month for each of October and November. The landlord told the tenants that they would have to move out or rent would be increased by that amount. No rent was paid for September, 2016 and the notice to end the tenancy was effective September 15, 2016, which was extended to September 30, but the tenants had to wait to take possession of their new home. The parties discussed ending the tenancy November 30, 2016 and with the landlord's consent the tenancy ended at that time.

The tenants claim is 4 months rent paid to the landlord, and the tenant was confused about the amount to claim on the application, which shows \$18,000.00.

The landlord testified that he took possession of the rental property on September 1, 2015 and allowed the tenants to continue the tenancy without raising the rent. The rental unit is a home sitting on a 4 ½ acre property with another house. In July, 2016 the landlord moved onto the property.

The landlord retired and needed a new tenancy agreement for his bank but the tenants refused to sign one.

The landlord's daughter expressed an interest in moving onto the property with her fiancé and was going to pay the landlord \$1,800.00 per month for rent. The landlord served the tenants with the notice to end the tenancy by personally handing it to one of the tenants on July 12, 2016. The landlord agreed to extend the effective date of vacancy to September 30, but by that date the tenants had no where to go. The parties

had discussions, and since the landlord's daughter was going to pay \$1,800.00 per month, the tenants said they would pay that. The landlord accommodated the tenants by agreeing to another 2 months to facilitate the tenants' possession date of their new property. Without any request by the landlord, the tenants provided a Mutual Agreement to End Tenancy and a letter, copies of which have been provided. It is signed by the landlord and both tenants on October 5, 2016 and ends the tenancy on November 30, 2016. The tenants paid no rent for September, 2016 and paid \$1,800.00 for October and \$1,800.00 for November, 2016.

The landlord's daughter was going to move in on September 15, 2016 but couldn't because the tenants hadn't vacated. The landlord's daughter stayed longer at her fiancé's mother's home, and then moved into a new place. The landlord testified that the daughter and fiancé moved in together at another location in November, and a copy of their new tenancy agreement has been provided. It is a tenancy agreement for a person other than the landlord's daughter but is marked "Amended" saying that the original tenant moved out November 2 and the tenancy agreement changes the names of the tenant, who moved in November, 2016 but does not indicate a date. It does not indicate a date that it was signed, and specifies rent in the amount of \$925.00 per month.

The landlord further testified that the rental unit was re-rented for January, 2017 for the rental amount of \$1,950.00 per month, plus utilities, as advertised on December 1, 2016 and sat vacant for a month. Also, out of good will, the landlord only collected \$1,000.00 for the first month from the new tenants. The only reason the landlord's daughter didn't move in is because the tenants didn't move out.

The landlord further testified that the tenants freely relinquished the security deposit in the tenant's letter of October 5, 2016.

Analysis

Firstly, I find it prudent to deal with what appears to be a misconception by the landlord in his testimony that he took possession of the rental property on September 1, 2015 and allowed the tenants to continue the tenancy without raising the rent. The *Residential Tenancy Act* states that a tenancy agreement goes with the property if sold while tenanted, and unless the tenants agree in writing to a new tenancy, the previous tenancy agreement remains in place, and the new landlord must not increase the rent except as provided in the regulations. Further, a landlord may not increase rent by such a large amount unless the tenant agrees in writing. The tenant's letter of October 5, 2016 agrees that the landlord may keep the security deposit in lieu of paying the extra

rent, and the parties agree that the tenants paid \$1,800.00 for each of October and November, 2016.

Once a notice to end a tenancy is given by either a landlord or a tenant it cannot be cancelled except with the express consent of both parties. I have reviewed the evidentiary material of the landlord. The landlord issued the 2 Month Notice to End Tenancy for Landlord's Use of Property on July 12, 2016 ending the tenancy on September 15, 2016, which I find is changed to the nearest date that complies with the law, being September 30, 2016. The parties signed the Mutual Agreement to End Tenancy on October 5, 2016 agreeing to end the tenancy effective November 30, 2016, which is in the form approved by the Residential Tenancy Branch.

The landlord's evidentiary material shows that his daughter secured a new tenancy to commence on November 2, 2016. Therefore, the landlord agreed to end this tenancy effective November 30, prior to the date that his daughter found a new place. I also note that the rent the daughter pays is \$975.00 per month, a lot less than the landlord testified she was going to pay the landlord. I don't accept the testimony of the landlord that his daughter didn't move in because the tenants didn't move out.

Where a landlord serves a notice to end a tenancy for landlord's use of property and then doesn't use the property for the purpose claimed in the notice within a reasonable amount of time and for at least 6 months, the landlord may be ordered to pay compensation to a tenant for double the amount. I find that the tenants have established a monetary claim as against the landlord for double the amount of rent, or \$2,950.00.

The landlord relies on the tenant's letter of October 5, 2016 wherein the tenant relinquishes the security deposit in lieu of paying the landlord the rent increase for the last 2 months of the tenancy. However, I find that the rental increase is unlawful, the tenants paid the increase for both months, and as such the relinquishing of the security deposit does not apply. Therefore, I find that the tenants have established a claim for the overpayment of rent in the amount of \$650.00.

Neither party is able to say when the landlord received the tenant's forwarding address in writing, or if the landlord ever received it. It is clear that the landlord has been served with the Tenant's Application for Dispute Resolution which contains the tenant's forwarding address in writing. A party who makes a claim must serve the other party within 3 days of making it, and the latest time that the other party might be deemed to have received it is 5 days. No one testified as to the date or method of service, and the landlord raised no issues with respect to service. The tenant received the hearing

package on December 9, 2016, and I find that it was served by no later than December 17, 2016.

A landlord must return to a tenant any security deposit or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the parties agree that the tenancy ultimately ended on November 30, 2016, and I find that the landlord received the tenants' forwarding address in writing on December 17, 2016. The landlord has not made an application for dispute resolution claiming against the security deposit. However, the tenants have not established how or when the landlord was provided with the forwarding address prior to making the application for dispute resolution, and therefore I decline to order that the landlord pay double the amount. However, the landlord now has it, and if the landlord fails to return the security deposit within 15 days of the date of this Decision or make a claim against it, the tenants will be at liberty to reapply for double.

In summary, I find that the tenants have established claims amounting to \$650.00 for an overpayment of rent, \$737.50 for the security deposit, \$2,950.00 for double the monthly rent and recovery of the \$100.00 filing fee, for a total of \$4,437.50.

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 \$4,437.50.

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: February 21, 2017

Residential Tenancy Branch

