



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenants' application under the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for loss pursuant to section 67 including recovery of the filing fee pursuant to section 72.

Both parties (2 tenants and the landlord) attended this hearing in person. Both parties were given a full opportunity to be heard, to present their testimony, and to make submissions. The landlord provided 2 witnesses to testify in person at this hearing. With respect to the tenants' application, the landlord acknowledged receipt of the Application for Dispute Resolution ("ADR") and initial evidence. The tenant acknowledged receipt of the landlord's 2 evidence packages submitted and served for this hearing. The landlord acknowledged receipt of all 4 separate evidence packages including digital evidence and an amendment submitted by the tenants. As a result of the amendment, the tenants altered the amount sought to \$12, 200.05. The landlord did not oppose the tenants' amendment.

The landlord indicated that he received the final package of evidence from the tenants the day before this hearing but that he had not been able to review the documentary evidence or view the digital evidence included prior to this hearing. As the landlord has acknowledged receipt of all previous materials, I will not rely on the tenants' most recent digital evidence submission. Further, I find this most recent package was served later than the timelines for service in the Act. Based on the lateness of the provision of these documents and that the landlord, as respondent, should have a reasonable opportunity to review the materials to be relied on at the hearing, I will not consider the tenant's most recent evidence package: I exclude this evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have carefully reviewed and considered all of the evidence submitted for this hearing, including photographs, audio and video clips, correspondence and the testimony of the parties, not all details of the party's respective submissions and / or arguments are reproduced here. I have included the most pertinent and relevant information to represent the background and evidence with respect to the tenant's current application.

Both parties agreed that this tenancy began on October 1, 2006 with a rental amount of \$1100.00 payable on the 1st of each month. This tenancy ended on December 31, 2015 when the tenants vacated after the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use ("the 2 Month Notice"). Both the 2 Month Notice and the tenants' security deposit were dealt with at Residential Tenancy Branch Hearings. As a result of a hearing in relation to the 2 Month Notice, the landlord was provided with an Order of Possession for the rental unit.

The tenants applied for a monetary order as a result of the landlord's failure to meet the reason provided in his 2 Month Notice to End Tenancy pursuant to section 51 of the Act. At the scheduled original teleconference hearing, this matter was adjourned to a face to face (in-person) hearing. The tenants sought an order from the landlord as follows,

Item	Amount
2 months' rent pursuant to section 51 of the Act	\$2200.00
Storage after move out of unit	598.50
Hotel stay after move out of unit	1582.00
Pain and Suffering by tenants	7720.00
Canada Post Mailings & Printing/copying for hearing	99.55
Total Monetary Order Sought by Tenants	\$12,200.05

The tenants also sought to recover their \$100.00 filing fee for this application.

At this in-person hearing, the landlord testified that he has continued to use the rental unit for his own purposes and therefore is not required to compensate the tenants for a failure to use the rental unit as described in his 2 Month Notice to End Tenancy. In that 2 Month Notice, entered into written evidence, the landlord identified the following reason for seeking an end to this tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...

[emphasis added]

The landlord testified that he lives upstairs, as he always has and that, now that the tenants have vacated, he uses the downstairs of his home (which was the tenants' rental unit) as additional space for a variety of activities including meditation and sound studio use. He testified that he installed a fireplace in the unit, renovating the unit to suit his own needs. He testified that he also uses the available space as a guest room when he has company in his home and when his son visits. He testified, as did one of his witnesses that one of his frequent guests (Guest S) may or may not continue to occupy the rental unit. He testified that he has discussed a more permanent residency in the unit with Guest S but nothing has come to fruition.

The tenants argued that the landlord has had a tenant paying rent since their move out: they believe that the unit is being rented by the landlord to Guest S. The landlord stated that Guest S helped with clean up after the tenants vacated the rental unit. The tenants submitted that a guest would not assist with cleaning unless she intended to move into the rental unit. The landlord stated that Guest S came to stay at the unit as she was a friend and she was in an abusive relationship. The landlord testified that, at this time, Guest S does not pay rent and is not residing in the unit exclusively.

The tenants submitted that, as part of an earlier hearing with respect to the 2 Month Notice to End Tenancy, the landlord testified that his son would be using the downstairs rental unit. The landlord responded that he testified that he wanted an area of home with privacy for his son as he is divorced and he hoped that his son would be more comfortable spending time at his house if he had a private, separate space for him to use. He testified that his son does spend time at his house and does, on occasion, use the downstairs space.

The tenants submitted that they have evidence that shows that Guest S has been a tenant since they vacated the residence. They argued that, even prior to their move-out Guest S was receiving mail at the residential premises. The tenants argued that Guest S is the person that the landlord's ex-wife refers to in a tape recorded conversation with the ex-wife. The tenants testified they recorded a conversation with the landlord's ex-wife in order to get information regarding the use of the unit after they vacated. They submitted two copies of this recording: one copy was edited and approximately 3 minutes long; the other was approximately 10 minutes long with a significant amount of the conversation redacted from the recording. They claim that the recording indicates that the landlord re-rented the unit. The portion of the conversation that is provided indicates that; the ex-wife believes that someone is staying in the basement unit and

that her son did not move in to the unit. This information was provided in response to probing questions from one of the tenants and lacked detail.

The tenants testified that they have watched the residential premises extensively since vacating the unit. They both testified that the landlord leaves the residence through the upstairs front door. The tenants testified that, on searching the home's recycling and garbage as well as some mail, they found a variety of personal mail (including an envelope with Guest S's driver's license with the residential tenancy address on it). The tenants testified that these observations and found items show that Guest S resides in the unit.

In their submissions and highlighted as evidence, the tenants included;

- The 2 Month Notice reflects that the landlord originally requested they vacate the rental unit by September;
- The documentary materials and tenants' testimony is that mail began arriving for Guest S in September;
- Documentary materials retrieved from the residence's recycling show that mail continues to arrive for Guest S at the rental unit;
- Recording of ex-wife shows and landlord's admissions that son did not move into rental unit;
- The landlord told them that he is "cash-poor" therefore it is improbable that he is not renting the unit; and
- Photographic evidence shows the landlord coming and going from upstairs portion of residence.

The landlord testified candidly that he made several attempts to get the tenants out of his home. He testified that they had become increasingly difficult to deal with. He and his witnesses testified that their privacy, feeling of safety and comfort were impacted by the actions of the tenants both before and after the end of the tenancy. He referred to the tenants' video and audio evidence that documents Tenant MD's attendance to the landlord's home at a very late hour at night. In fact, the tenant provided video recordings of going into the landlord's bedroom when he was asleep to complain of a barking dog. The tenant testified that she was sleep deprived because of the dog barking. The landlord testified he decided that he would no longer rent the basement unit and regain his privacy by using the entire residential premises himself. He testified that he "just needed to take possession of [his] house".

The landlord testified that he became friends with Guest S through his roommate, Witness MG. He testified that she moved from another province, staying in the unit on occasion after the tenants moved out. He testified that she does not live there as a renter or even full time but that she has been allowed to stay as often as she wants

because she had to leave an abusive partner. He testified that many of his friends offer to assist in the clean up after the tenants left.

The landlord testified that he did some unexpected renovations after the tenants vacated the rental unit. He testified that he discovered mold and was required to have the unit inspected and remediated. He testified that, after spending some time downstairs to meditate and relax, he decided he would like to install a fireplace so he did so. He testified that the fireplace work is still being finalized but he continues to use the downstairs space as does his roommate and his roommate's girlfriend as well as other friends including Guest S.

The landlord testified that he lives, works with and is friends with very creative people and so the downstairs unit has become a place where his friends can gather, go to work on their crafts, including use his sound studio and stay when they are visiting late or from out of town.

The landlord argued that he does not understand why he should be required to pay for the tenants' storage and hotels after move-out when he provided notice and, at the previous hearing regarding the 2 Month Notice and that the arbitrator told the tenants to be prepared for both possible outcomes of the hearing – one of those outcomes being the issuance of an Order of Possession.

The other occupants of this residence, Witness MG and Witness RM both testified at this hearing. Witness MG testified that he has lived with the landlord since approximately 2005. He testified that the landlord's son lives on the residential premises on and off. He testified that he was aware that the landlord intended to provide more space and privacy for his son. He testified that the landlord always intended to expand his use of the residential premises and home to include the downstairs space.

Witness MG testified that the rental unit was in "rough shape" when the tenants moved out. He testified that he, his girlfriend (Witness RM), Guest S and some other friends assisted in the clean up after the end of the tenancy. He testified that the landlord installed a fireplace because he used the space for his and his son's own use: that the landlord thought it would be nice.

Witness MG testified that he knows Guest S and that they have all (including the landlord) been friends for some time. He testified that Guest S was in an abusive relationship and therefore he and the landlord asked her to stay with them to be safe.

Witness CM testified that the tenants left the suite in a “disastrous condition” when they moved out. She testified that everyone helped the landlord clean up the unit. She testified that the landlord kept his bedroom upstairs but would go downstairs for quiet time and other activities.

Witness CM testified that she uses the downstairs kitchen to bake as that is both her hobby and her occupation. Witness CM testified that her boyfriend, Witness MG and the landlord were very disturbed by the actions of the tenants at the end of the tenancy. She was very emotional in her testimony stating, “you guys know the mess you left behind?” Both witnesses said that the tenants have caused them discomfort with respect to repeated contact and attendance at the residence, taking photographs of the property and its residents, invading their privacy by spying and going through their trash and recycling, among other actions.

Analysis

Section 49 of the Act allows the end of a tenancy for landlord's use including when the property is to be occupied by a landlord or his close family members. The tenants rely on section 51 of the Act that provides an outline for addressing a 2 Month Notice to End Tenancy for Landlord's Use after the tenants before and after the tenancy has ended. After the tenancy ends as a result of a 2 Month Notice, the following provisions of section 51(2) take effect:

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 sought an amount double their monthly rent (\$1100.00 per month) pursuant to section 51(2). The tenants both testified that they believe the landlord issued a 2 Month Notice to End Tenancy without the intention of using it for himself or his close family to occupy. The tenants' interactions with the landlord prior to and after the end of this tenancy were extremely acrimonious. The decision to vacate the rental unit was determined by an arbitrator and outside of the tenants' control. The tenants worked

diligently to obtain evidence to support their position regarding the landlord's use of the rental unit.

Given the conflicting testimony at this hearing, much of this case hinges on a determination of credibility. In addition to the manner and tone (demeanor) of the party's evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy. The demeanor of the parties present at this hearing, as well as the demeanor of the witnesses assisted me in making a determination in this matter. I found that, despite the sensitive nature of the subjects raised at this hearing, I found the testimony of the landlord credible. I found that the landlord generally answered questions in a calm and candid manner. The landlord made admissions with respect to the situations that arose during the course of this tenancy, including his own failings in addressing repair issues raised during the tenancy; his desire to spend more time with his son; and a discussion regarding a future long term stay by Guest S.

With respect to the landlord's witnesses, I found that they both testified in a manner that was convincing, providing evidence consistent with the landlord's evidence. The testimony of Witness MG provided insight into the nature of this tenancy as well as the motivations of the landlord to end the tenancy and use the space for his own purposes, including having more time with his son. I also found his testimony to be candid and clear on the events that occurred both before and after the end of this tenancy.

The testimony of Witness RM was particularly compelling in that she was clearly affected by the actions of the tenants prior to and after the end of this tenancy. She provided unsolicited testimony that she uses the downstairs unit/space and that others do, as well. She testified that she resides in the home, as well and that the landlord is a generous person with his friends, creating a creative, collaborative and welcoming environment where his friends can feel safe and welcome and can work at their craft. I accept Witness RM's testimony that the rental unit was left in a substandard state at the end of the tenancy. I also accept the testimony of both the witnesses and the landlord that no one is currently renting the downstairs rental unit from the landlord.

I found that the tenants' testimony, particularly Tenant MD's testimony to be more unreliable and reflective of the behavior she exhibited during the course of the tenancy. I do not find that either of the tenants provided entirely false testimony however I find that they have not satisfactorily proven that the landlord has failed to use the rental unit in a way that meets his reasons for ending the tenancy.

I find that the landlord uses the rental unit for his own purposes, occupying the unit as part of his entire home. I find that the landlord was credible in his assertions at this hearing and I accept his reasons and justification for using the rental unit space in the manner that he does. I accept the landlord's argument that the landlord took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice.

I find the landlord provided sufficient evidence to counter the tenant's proposition that he did not use the rental unit in accordance with the 2 Month Notice to End Tenancy. Therefore, I find the tenants have provided insufficient evidence to prove that they are entitled to the equivalent of double the monthly rent payable under the tenancy agreement pursuant to section 51(2). I dismiss their application to receive 2 months' rent equivalent.

The tenant also applied to recover the cost of storage and hotel living accommodations at the end of this tenancy. I dismiss this application as it was previously found that the landlord provided a valid 2 Month Notice to End Tenancy. The tenants are responsible for their move out and associated costs.

The tenants applied to recover the costs of Canada Post registered mailings to the landlord for this application as well as their costs incurred for printing and copying their evidence. This is not a compensable cost under the Act and, in the circumstances; I find that the tenants are not entitled to recover these costs.

Finally, the tenants applied for "pain and suffering". Pursuant to Residential Tenancy Policy Guideline No. 16,

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as: loss of access to any part of the residential property provided under a tenancy agreement; loss of a service or facility provided under a tenancy agreement; ... and damage to a person, including both physical and mental.

To substantiate a claim for damage or loss under the Act, including physical or mental damage to a person, a party must meet criteria that include providing proof that the respondent has failed to comply with the Act, regulation or tenancy agreement. As I have found that the landlord has not violated the Act, regulation or the tenancy agreement, I find that the tenants are not entitled to recover cost for "pain and suffering".

As the tenants were unsuccessful in their application, I find they are not entitled to recover the cost of their filing fee.

Conclusion

I dismiss the tenants' application in its entirety 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: May 19, 2017

Residential Tenancy Branch