



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated May 23, 2017 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on her own behalf, as did the Landlord. The parties provided affirmed testimony.

Although unable to provide specifics, the Tenant testified the Landlord was served with the Application package within a week after receiving the Notice of a Dispute Resolution Hearing. The Landlord advised the Application package was served on her niece, but acknowledged that it had been received. I find the Application package was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*. In addition, the Tenant submitted a further documentary evidence package to the Residential Tenancy Branch on July 21, 2017. The documents consisted of three photographic images of a refrigerator, a toilet, and what appears to be the corner of a room. The Tenant testified she did not serve these documents on the Landlord on the advice of a representative of the Residential Tenancy Branch. I find the photographic images were not served in accordance with Rule of Procedure 3.14. Although the photographic images have not been considered further in this Decision, I find they would not have impacted the outcome of the Decision in any event.

No further issues were raised with respect to service and receipt of the above documents. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties testified the tenancy began in March 2013 and ended in April 2017. Rent was due in the amount of \$650.00 per month.

The Tenant testified she received a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 12, 2017 (the "Two Month Notice"), a copy of which was submitted with the Application package. The Two Month Notice was issued on the following basis:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

[Reproduced as written.]

However, the Tenant testified that a former neighbour who also lived in the rental property told her the Landlord was renovating the Tenant's rental unit and that a family member had not moved in. Accordingly, the Tenant asserted that the Landlord did not do what was stated on the Two Month Notice.

In reply, the Landlord maintained that her mother-in-law and father-in-law moved into the rental unit at the beginning of June 2017. They were unable to move in earlier because of the "mess" left by the Tenant when she vacated. The Landlord acknowledged the refrigerator and toilet were replaced, as were the carpets, and that the total renovation cost roughly \$4,000.00.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant sought a monetary order in the amount of \$1,300.00, pursuant to section 51 of the *Act*. This provision requires a landlord to take steps to accomplish the stated purpose for ending the tenancy within a reasonable time, or to use the rental unit for the stated purpose for at least six month beginning within a reasonable period after the effective date of the notice to end tenancy. A landlord who fails to do so may be ordered to pay compensation to a tenant in the amount of double the rent payable under the tenancy agreement.

In this case, the Tenant testified the Landlord renovated the rental unit, which was not the stated purpose for ending the tenancy. In reply, the Landlord testified that some renovations were required due to the condition of the rental unit, but that her mother-in-law and father-in-law moved in at the beginning of June 2017.

I find the Tenant provided insufficient evidence for me to conclude the Landlord breached the *Act*, regulations, or the tenancy agreement. Specifically, there is insufficient evidence before me to find the Landlord did not use the rental unit for the stated purpose. Rather, I find it more likely than not that the Landlord's family members moved into the rental unit at the beginning of June 2017, and that this was a reasonable time to accomplish the stated purpose in light of the required cleaning and renovations.

The Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, 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: November 1, 2017

Residential Tenancy Branch