Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order pursuant to section 67 of the *Act;* and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenants appeared at the hearing. The landlord was represented at the hearing by agent, B.K. (the "landlord"), while the tenants were represented at the hearing by tenant, J.B. (the "tenant"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenants' application for dispute resolution, and the tenants' evidentiary package by way of Canada Post Registered Mail. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the documents and the tenants' application.

Issue(s) to be Decided

Are the tenants entitled to a monetary award pursuant to section 51 of the *Act*?

Can the tenants recover the filing fee from the landlord?

Background and Evidence

Undisputed testimony presented to the hearing by the tenant explained that this tenancy began in December 2014 and ended on June 30, 2015. Rent was $2,100.00 per month and this tenancy ended after the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The tenants attempted to dispute this notice, but their application was dismissed following a May 2015 hearing.

Tenant J.B. argued that the tenants were entitled to compensation under the *Act* because the landlord had not used the rental premises for the reason cited on the 2 Month Notice. A copy of the 2 Month Notice supplied to the hearing notes that it was served on the tenants because the premises was to be, “occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) or the landlord, or the landlord’s spouse.”

During the hearing, tenant J.B. explained that following the conclusion of the tenancy, she had to return to the property on occasion to collect some mail that had inadvertently been sent to the former home. The tenant said that while attending the rental property she spoke to the new occupants of the rental unit and they had informed her that the owner’s daughter never moved into the rental unit. In addition the tenant argued that the property had been fully renovated and what had formerly been a single home had been converted to two rental units that comprised of downstairs and upstairs units.

Part of the tenants’ evidentiary package included an email exchange between the applicant and L.W., one of the rental unit’s current upstairs tenants. A close examination of this exchange revealed that L.W. and her husband began occupying the property on July 25, 2015, that numerous persons occupied the bottom rental suite and that the L.W. had little knowledge of the applicants from the landlord, other than to establish that they previously lived in the rental unit. When asked specifically about the owner’s daughter and whether something changed in her situation preventing her from moving into the home, the L.W. stated, “I can’t answer to that because I don’t know for sure. I’ve only reached Canada on July 25, 2015.”

The landlord argued that the tenant had misunderstood the conversation which had occurred with the L.W. and that the owner’s daughter had in fact occupied the rental unit on an, on and off basis until it was sold in May 2017. The landlord stated that owner’s daughter, who suffers from mental health issues, was directed by various doctors to live with a caretaker and had in fact lived in the rental unit with L.W. and her husband. He continued by explaining that because of medical issues, the owner’s daughter had gone back and forth between the rental premises and the hospital, and was also susceptible to outside influences which drew her away from the home for extended periods of time. He said that the owner’s daughter suffered from severe mental health issues and that L.W. was in fact the wife of the caretaker assigned to care for the owner’s daughter in the rental premises.

Analysis

The tenants have applied for a monetary award of $4,200.00. The tenant argued that the landlord had not used the rental property pursuant to the reasons issued in the 2 Month Notice to End Tenancy.

Section 51(1) of the *Act* states, “If 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 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, 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.”

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

The tenant argued that she had been informed by L.W. that the owner’s daughter never actually moved in and occupied the rental unit. Furthermore, she said that she spoke with the downstairs tenants and they had told her that the owner’s daughter did not live on the premises. As part of her evidentiary package, the tenant supplied an email exchange that she had with L.W. regarding the occupation of the rental unit by the owner’s daughter.

A close reading of this email exchange does not reveal that the owner’s daughter did not move in to the rental unit. When asked directly, “did something change in A’s situation/condition after April 2015 that made her unable to move into the house (hospitalized, maybe)?”; L.W. responds, “I can’t answer to that because I don’t know for sure. I’ve only reached Canada on July 2015.” The remainder of the email exchange makes no mention of the owner’s daughter not being in occupation of the rental unit.

In addition to this email, a large amount of evidence was submitted to the hearing by the tenants. This evidence included, an extensive background detailing past issues with the landlord, written submissions speaking to the lack of good faith in issuance of a 2 Month Notice, allegations of false and misleading information heard during past arbitrations

before the Residential Tenancy Branch, and submissions speaking to alleged unconscionable terms contained in the tenancy agreement. Additionally, a USB stick was included which contained images and videos of debris scattered around the rental premises. I find that this evidence is irrelevant to the matter at hand, because it does not touch on whether the owner's daughter actually took up residence in the unit in question, and instead relates to points of contention which have been ruled on in previous hearings.

As is noted above, section 67 the party claiming the damage or loss bears the burden of proof. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Based on the evidence submitted to the hearing and the oral testimony of the tenant and the landlord, who explained that the owner's daughter did take up residence in the rental premises with the care takers, I find that the tenants have not established that violation of the *Act* has occurred, or that the owner's daughter failed to occupy the rental unit.

For these reasons, the tenants' applications for a monetary award and a return of the filing fee are dismissed.

Conclusion

The tenants' application is dismissed without leave to reapply.

The tenants must bear the cost of their own filing fee.

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 20, 2017

Residential Tenancy Branch