



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Applicants sought monetary compensation from the Landlords as well as recovery of the filing fee.

Both parties called into the hearing which occurred on March 5, 2018 and continued May 22, 2018. The hearing process was explained and the parties were asked if they had any questions.

On April 9, 2018 the Tenants sent an email to the Landlords asking for an adjournment. The request was denied. The Tenants sent an agent to appear on their behalf who was prepared to present their evidence and submissions as required.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?

Background and Evidence

At the hearing on March 5, 2018, the Tenant's father, R.S., testified as follows. He confirmed that the rental unit is a three bedroom basement suite. He stated that the monthly rent was payable in the amount of \$1,100.00, although each Tenant signed a separate agreement providing that they each were to pay \$550.00.

The tenancy agreement provided that the rental term was from May 1, 2017 to August 31, 2017. Only two of six pages of the agreement were provided in evidence before me. At my request the balance of the agreement was provided to me and received by the branch on March 13, 2018.

The Tenants paid rent for May, June, July and August 2017.

R.S. stated that the Tenant K.S. was only in the rental unit for two weeks. The other Tenant, K.J. resided in the unit for four months.

R.S. stated that the Tenants believed that they had an oral agreement with the property owner, P.P. that she would rent the rental unit to the Tenants for the school year commencing September 1, 2017. He further stated that they were waiting for the tenancy agreement to sign, at which time A.H. and M.W. entered into a new agreement with the property owner.

R.S. submitted that A.H. and M.W. fraudulently misrepresented the terms of the tenancy. Although the parties initialed that they would move out at the end of August 2017, R.S. stated the Tenants believed that they would be able to remain, hence why they did not check the required box.

In the within action the Tenants sought compensation for all the rent paid, their moving costs, missed work, aggravated damages and recovery of the filing fee for a total of \$9,012.60.

In response to the Tenant's submissions, A.H. testified that the owner of the rental property is P.P. He confirmed that he and M.W. had a fixed term tenancy from September 2016 to September 2017 with the proper owner, whereby they paid \$1,740.00 per month. The tenancy agreement was not provided in evidence.

A.H. further confirmed that he received an email, or verbal authority from P.P., to enter into a sublease with K.S. and K.J.

A.H. stated that the property owner, P.P. met both of the Tenants and was there when they signed the sublease.

He stated that they signed two subleases; he claimed that he was the Landlord for the sublease with K.J. and the other named "Landlord", M.W. was the Landlord for the sublease with K.S.

A.H. stated that they had no plan on signing a new lease with P.P. because they only had two people to fill three bedrooms and could not afford the rent on their own.

He also stated that they told the Tenants that if they could work out a new agreement with P.P. they could go ahead and sign a new lease with her directly. He stated that

from the evidence submitted the Tenants it appears they only began “applying in mid-July”.

A.H. stated that to his knowledge, P.P. posted the rental unit on a popular online rental site in approximately July of 2017.

A.H. testified that he and M.W. then found another roommate which made renting the rental unit possible. He confirmed that they signed a new fixed term tenancy with P.P. from September 1, 2017 to August 31, 2018. He confirmed that monthly rent is now \$1,920.00.

A.H. stated that he and M.W. moved back into the rental unit on September 1, 2017 under the new tenancy agreement.

As noted, on the date this hearing reconvened on May 22, 2018, the Tenants were not available. They sent an agent, D.I., to appear on their behalf. He confirmed that he was instructed to proceed, although as he was not at the original hearing I read to him my notes from the March 5, 2018 hearing and asked if he had anything further to add. Notably, it was the Tenants who requested an adjournment to reply to the Landlord’s evidence.

D.I. testified as follows. He noted that on March 22, 2017 the owner, P.P., sent an email to the Landlords confirming that she gave permission for them to sublet up to the end of the term of their tenancy.

D.I. stated that it was the Tenants’ position that A.M. misrepresented to the Tenants that they were not renewing their own lease and the Tenants would not have moved in had they known. He further stated that the Tenants were “verbally assured” before they signed the contract that they would be able to stay beyond August 2017.

D.I. also noted that the move out clause on the sublease contract was not checked.

D.I. further stated that it was the Tenants’ position that the Landlords conspired with the landlord to enter into a new agreement.

D.I. submitted that the Landlords’ representation was false, known to be false, or made recklessly without regard to the truth. The representation as made with the intention that the other party rely on it. The other party in fact relied on the representation and suffered damage.

The Landlord, M.W., responded as follows. He confirmed that when he entered into the sublease with the Tenants he did not show them the original tenancy agreement, nor did they ask to see it. He further confirmed that he and the other Landlord made it clear to the Tenants that they needed to be proactive in securing a subsequent and new lease with the Property Owner/Landlord.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. For an applicant to be successful they must prove that their losses are a result of some action or inaction of the other party and that the action or inaction is in violation of the *Act*, regulation or tenancy agreement.

The Tenants apply for monetary compensation in the amount of \$9,012.60 representing return of all rent paid, their moving expenses, lost wages, aggravated damages and recovery of the filing fee. The basis of their claim is that they say the Landlords fraudulently misrepresented the terms of their tenancy. They allege that the Landlords assured them they would be able to continue with a new tenancy with the Property Owner after the expiration of their tenancy agreement, and when this didn't happen they suffered financial losses

The evidence before me establishes that the Tenants entered into a sub-tenancy with the Landlords, who were the "Head Tenants" in a one year fixed term tenancy with the Property Owner.

The Tenants submit that the Landlords told them they had no intention of moving back into the rental unit, and that at the end of the sub-tenancy on August 31, 2017, they would be able to enter into their own tenancy agreement with the Property Owner.

The parties agreed that the Landlords had a one year fixed term tenancy agreement with the Property Owner which was set to expire on August 31, 2017. The parties further agreed that the Property Owner, P.P., gave her Tenants, the Landlords in the

application before me, authority to sublet their tenancy. Documentary evidence before me indicates the Property Owner provided verbal authorization on March 21, 2017 followed by an email that same day.

The Landlords testified that initially they did not intend to move back into the rental unit and enter into a new tenancy agreement with the Property Owner as they could not afford the rental unit. They further testified that their circumstances changed such that they were able to find another roommate and subsequently entered into a new tenancy agreement with the Property Owner as of September 1, 2017.

The Landlords provided an email in evidence from the A.H.,’s father, P.H. to the Property Owner dated July 13, 2017, wherein P.H., requests a letter of reference for A.H. as a tenant. In this email, P.H. writes that A.H. only had one roommate and was therefore not able to stay in the rental unit. This email supports the Landlords’ testimony that they were initially not planning to return to the rental unit.

The Tenants allege that they would not have moved into the rental unit for the four month term had they known the tenancy would end on August 31, 2017 and that they would not be able to enter into a new tenancy agreement with the Property Owner at that time.

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find that the Tenants’ claim should be dismissed.

While the Tenants may have hoped they would enter into a new tenancy agreement with the Property Owner, they did not. Their tenancy agreement clearly provided that their tenancy was for a four month term ending on August 31, 2017. The parties initialed the part of the agreement which confirmed they were to move out at that time.

The Landlords (Tenants in the head tenancy) had no legal authority to bind the Property Owner into entering into a new agreement with the Tenants. While they could recommend the Property Owner enter into a tenancy agreement with the sub-Tenants, they had no way to ensure this occurred. The decision to rent to the Tenants as of September 1, 2017 was a decision for the Property Owner alone.

I accept the Landlords’ evidence that they informed the Tenants they would need to make their own arrangements with the Property Owner for occupancy beyond August 31, 2017 as they had no legal authority with respect to the rental unit (under their existing tenancy agreement) after that date.

I also accept that while discussions with the Property Owner occurred, no tenancy agreement was reached between the Tenants, K.S. and K.J. and the Property Owner.

I find that the Landlords agreed to sublet their tenancy for the remaining period of the tenancy. Despite the fact the sub-tenancy was for the entire balance of the term, I find that the circumstances of the tenancy between the Landlords and the Tenants is more akin to a sublet, not an assignment. The Tenants paid rent to the Landlords and the Landlords retained their obligations to the Property Owner. Further, I find that no contractual relationship was created between the Tenants and the Property Owner.

Whether the original tenancy was assigned or the parties entered into a sub-tenancy, there was no dispute that the written agreement between the Landlords and the Tenants (under the sub tenancy) was for a fixed term tenancy ending August 31, 2017.

The parties further agreed that the Tenants were to take steps to enter into a new agreement with the Property Owner prior to August 31, 2017. As such, whether the original agreement was assigned or sublet, the original tenancy was to end on that date.

Since the filing of their application, the law with respect to fixed term tenancies and move out clauses has changed; however, at the time move out clauses were enforceable. Either way, the Tenants did not dispute the end of the tenancy on August 31, 2017 and moved from the rental unit, rather than asserting a right to remain.

The Tenants allege the Landlords fraudulently misrepresented the terms of the tenancy such that they should be able to rescind the contract and recovery all money spent.

A fraudulent misrepresentation consists of a representation of fact made without any belief in its truth, with intent that the person to whom it is made shall act upon it and actually causing that person to act upon it (*Roussel v. Saunders* (1990) 85 Nfld. & P.E.I.R. 228.)

The evidence before me indicates that during the four month tenancy the Property Owner advertised the rental unit online such that she could have rented to unrelated third parties. Had the Landlords already secured their tenancy with the Property Owner beyond August 31, 2017, it is unlikely that she would go to the effort of advertising to others. Similarly, the fact the Property Owner advertised the

rental unit to others suggests no agreement was reached between the Tenants and the Property Owner in terms of an ongoing tenancy.

In the case before me, I accept the Landlords' evidence that they did not intend to enter into a new tenancy agreement with the Property Owner in September of 2017. I further accept their evidence that their circumstances changed such that they were able to find a roommate to fill the third bedroom. It is equally possible their circumstances could have changed such that they decided to live independently. While the Tenants are clearly disappointed, I am unable to find, based on the evidence before me, that they intentionally misled the Tenants into entering the sub-Tenancy.

I find that any losses incurred by the Tenants were a direct result of the short term tenancy which they agreed to, not any fraud perpetrated by the Landlords or the Property Owner.

Conclusion

I find the Tenants have failed to prove their claim and I therefore dismiss their claim in its entirety.

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: June 21, 2018

Residential Tenancy Branch