



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 7, 2018 (the "Application"). The Tenants sought \$2,378.00 compensation under section 51 of the *Residential Tenancy Act* (the "Act"). The Tenants also sought reimbursement for the filing fee.

The Tenants and Landlord appeared for the hearing. I explained the hearing process to the parties and nobody had questions when asked. All parties provided affirmed testimony.

The Tenants had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenants' evidence. The Landlord confirmed he received the hearing package and Tenants' evidence and did not raise any issues in this regard.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Are the Tenants entitled to \$2,378.00 compensation under section 51 of the *Act*?

Background and Evidence

A tenancy agreement was not submitted as evidence. Tenant K.H. testified as follows. The Tenants had a written tenancy agreement with a previous owner of the rental unit. A second owner became their landlord when he purchased the rental unit. The Landlord then purchased the rental unit and became the landlord. The Landlord agreed with this.

The Tenants said the tenancy started February 1, 2009. The Landlord did not know when the tenancy started. The parties agreed on the following. The tenancy was a month-to-month tenancy at the end. The tenancy ended February 18, 2018. Rent was \$1,189.00 at the end of the tenancy.

The parties agreed on the following. The Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on the Tenants January 22, 2018. The effective date of the Notice was March 31, 2018. The grounds for the Notice were that the "rental unit will be occupied by the landlord or the landlord's close family member...". The Tenants had submitted a copy of the Notice.

Tenant K.H. testified as follows. At the beginning of May, a friend was looking on craigslist and found the rental unit for rent. The rental unit is the top floor suite in a house with three separate suites. The unit below the rental unit was also for rent and has been rented. Tenant K.H. submitted that this shows the Landlord had no intention of having his family move into the rental unit. Tenant K.H. did not know if the rental unit has been rented.

The Tenants had submitted seven screenshots as evidence. The screenshots relate to two separate craigslist ads and a text message chain.

The first screenshot is an ad for a three-bedroom suite with the same street address, and in the same city, as the rental unit. It shows the ad was posted 11 days prior. Tenant K.H. testified that the calendar icon at the bottom of the screenshot shows it was taken May 7th. Tenant K.H. testified that the day of the week is shown in the top right corner of the shot. The top right corner shows "Mon 9:41 PM". The ad states the unit is available June 1st. The Tenants testified that the rental unit is the only three-bedroom suite in the house.

The second screenshot shows the reply information on the ad. Both parties agreed the ad includes the Landlord's phone number as the contact number.

The third screenshot shows 14 photos of the rental unit and the text of the ad. The text of the ad says the unit is available June 1st. It states, "Newly Renovated top floor, 3 Bedroom 1100 square foot unit, with large patio...Shared Coin operated Laundry on location..." The text of the ad includes the Landlord's phone number as the contact number. The Landlord agreed the 14 photos are of the renovated rental unit and are accurate. The Landlord said it is accurate that the rental unit has shared coin operated laundry on location as stated in the ad.

The fourth screenshot relates to a two-bedroom suite in the same house. The ad shows the suite is "available now". It shows it was posted three days prior. Tenant K.H. testified she does not know when the shot was taken but thinks it was a day or two after the May 7th shots. Tenant K.H. testified that this is a listing for the suite below the rental unit which is the only two-bedroom suite in the house. Tenant K.H. said this shows none of the units are occupied by the Landlord or his family.

The fifth screenshot shows the reply information for the second ad. It lists the Landlord's phone number as the contact number.

The sixth screenshot shows the two-bedroom suite is listed as available May 15th or June 1st. The text of the ad includes the Landlord's phone number as a contact.

The last screenshot is of a text message chain. Tenant K.H. testified that the Tenants had a friend text the Landlord about the posting to confirm it is for rent and not a posting from someone else. Tenant K.H. testified the texts were sent around May 8th or within a day or two of the May 7th screenshots. The text from the friend says, "Hello, I saw your ad on Craigslist for the 3 bedroom renovated too floor and am interested in applying..." The Landlord replied, "Showings on Saturday starting at 1 pm if ur interested". The friend replied, "Ok great! Can I just show up at 1 or do I need to book a time?" The Landlord replied, "U can show up" and "Open house". The Landlord agreed these texts were from him.

The Landlord testified as follows. The two craigslist ads are scams. He never posted them. He does not know where they came from. All three previous tenants at the house have his phone number so his phone number on the ads could have come from any of them. He has 36 additional rental units. Any ad he posts on craigslist goes to another email account. During the same time, he had a three-bedroom suite in another building for rent. His mother lives in the rental unit. His daughter lives in the two-bedroom suite below the rental unit. The Landlord submitted that the internet is so broad and craigslist scams have occurred.

In relation to the text message chain, the Landlord testified he thought the text asking about the "3 bedroom renovated too floor" was about a different craigslist ad he had up at the time. I asked the Landlord why he did not submit this craigslist ad as evidence. He said it was not relevant and had nothing to do with this issue.

I asked the Landlord why he did not call his mother as a witness. He said she is 83 years old, has dementia and does not speak English. I asked the Landlord why he did not call his daughter as a witness. He said she works full time. I also understood him to say he did not think he needed to prove his family lives in the rental unit and that the Tenants were aware his family was going to move in. The Landlord then referred to the "renoviction" notice. I asked if he had renovated the rental unit and he said he did.

In relation to the craigslist ad stating the unit has been renovated and the photos of the renovated unit, the Landlord testified that people could have come in and out and taken photos during the construction. He referred to the contractor and trades people coming into the unit. I asked the Landlord if his position was that the contractor and trades people posted the craigslist ad and I understood him to say he was assuming but could not prove this. When asked about the absence of evidence to support his position, the Landlord said he is not an expert in arbitration.

In reply, Tenant K.H. testified that the Tenants did not create a fake craigslist ad. Tenant P.W. pointed out that the photos on the craigslist ad are of a clean unit that is completed and ready to be occupied and do not show ongoing construction. The Landlord agreed the photos do not show ongoing construction.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, the Tenants as applicants have the onus to prove their claim “on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”.

Based on the testimony of the parties, I find the following. Rent was \$1,189.00 at the end of the tenancy. The Landlord served the Notice on the Tenants January 22, 2018. The Notice was effective March 31, 2018. The grounds for the Notice were that the Landlord or a close family member would be occupying the unit.

I accept the testimony of the Tenants and find the craigslist ads relate to the rental unit and the unit below it. I did not understand the Landlord to dispute that the ads relate to these units.

The Landlord submitted that these ads were scams posted by someone other than him. It seemed that the Landlord was first suggesting that the previous tenants of the house could have been responsible for the ads. It then seemed that the Landlord was suggesting the contractor or trades people who renovated the rental unit could have been responsible for the ads.

In my view, the ad for the rental unit must have been posted by someone with knowledge of the unit and Landlord given the following. Both parties agreed the Landlord's phone number is listed as the contact number in the ad. The Landlord agreed the rental unit has been renovated as stated in the ad. The Landlord agreed the house has shared coin operated laundry on location as stated in the ad. The Landlord did not point to any inaccuracies in the ad.

The ad also must have been posted by someone with photos of the renovated rental unit as the Landlord agreed the photos are of the renovated unit and are accurate.

I also note that it does not accord with common sense that an unknown third party would post a scam craigslist ad with the Landlord's phone number as the contact number. It would seem there would be no financial gain to a scammer to have the Landlord paid for the rental.

I do not accept the suggestion that previous tenants of the house could have been responsible for the craigslist ad given it includes photos of the renovated rental unit. I cannot accept that the previous tenants would have had access to these photos without some evidence to support this. The Landlord seemed to suggest that anybody could have entered the rental unit while it was being renovated. I find it unlikely that previous tenants would have entered the rental unit while it was being renovated to take photos of it to use in a scam craigslist ad. I also note the Landlord agreed the photos are of a completed unit and do not show ongoing construction which tends to discredit the Landlord's suggestion rather than support it.

Nor do I accept that the contractor or trades people involved in the renovation could have been responsible for the craigslist ad without some evidence to support this. I cannot see what possible reason the contractor or trades people would have to do this.

I am satisfied on a balance of probabilities that the craigslist ad is a legitimate ad posted by the Landlord or someone on his behalf. I find this based on the content and accuracy of the ad as outlined above. I

find it unlikely that the ad is a scam posted by someone other than the Landlord. I find the Landlord's submissions in this regard to be contrary to common sense and human experience. The Landlord submitted no evidence to support his position. The Landlord submitted no evidence to support his position that his mother and daughter live in the rental unit and unit below.

Based on the testimony of both parties, I find the Landlord exchanged text messages with the Tenants' friend about showing a three-bedroom renovated unit for rent on craigslist. I do not accept the Landlord's testimony that he thought the text related to a different unit he had posted on craigslist. I did not find the Landlord credible given his position and submissions throughout the hearing that were contrary to common sense and human experience and unsupported by any extrinsic evidence. In the absence of evidence to support the Landlord's submission that he had another similar unit listed for rent on craigslist at the same time, I cannot accept this submission. I find it likely that the text message chain relates to the rental unit and I find this evidence supports the finding that the craigslist ad is legitimate.

Based on the craigslist ad and text message chain, I find the Landlord listed the rental unit for rent and was showing the rental unit to prospective tenants. Based on the calendar icon in the screenshots and the craigslist ad itself, I find the rental unit was listed for rent 11 days prior to May 7th. I find, based on the craigslist ad, that the rental unit was listed as available June 1, 2018.

Section 51 of the *Act* sets out the consequences of a landlord not following through with the stated purpose of a section 49 notice to end tenancy and states:

(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. (emphasis added)

Re-listing the rental unit for rent is contrary to the stated purpose of the Notice which was that the Landlord or a close family member intended to occupy the unit. I find that the Landlord ceased to use the rental unit for the purpose stated in the Notice as of the date the unit was re-listed for rent. I find this would have been around April 26, 2018, within one month of the effective date of the Notice. I also note the unit was listed as available June 1, 2018, within two months of the effective date of the Notice. Therefore, the Landlord did not use the rental unit for the purpose stated in the Notice for at least six months as required by section 51(2)(b) of the *Act*.

Pursuant to section 51(2) of the *Act*, the Landlord must pay the Tenants the equivalent of double the monthly rent under the tenancy agreement. The Tenants are therefore entitled to compensation in the amount of \$2,378.00.

Given the Tenants were successful in this application, I grant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Application is granted. The Tenants are entitled to \$2,378.00 compensation under section 51 of the *Act*. The Tenants are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

I grant the Tenants a Monetary Order in the amount of \$2,478.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 22, 2018

Residential Tenancy Branch