



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package via Xpress Post on May 16, 2018. Both parties confirmed that the tenants served the landlord with the submitted documentary evidence via Xpress Post on May 16, 2018. Both parties confirmed that the landlord served the tenants with the submitted documentary evidence in person. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset it was clarified with the tenants that the request for an order of possession is not required as the tenants currently occupy the rental space. The tenants request for the landlord to acknowledge the payment of a security deposit is also not required as the tenancy has not yet ended. The tenants request that utilities (hydro and natural gas) continue to be included in the rental costs as part of the tenancy agreement. This was clarified that utilities are still provided at this time and as such require no action.

The hearing shall proceed on the tenants' request for compensation for loss of cable/internet and a reduction in rent for the loss of these services which the tenants claim are part of the

tenancy agreement for the period April 27, 2018 to the date of this hearing for \$520.47 (\$173.49 @ approx.. 3 months).

The hearing was adjourned due to extensive discussions on preliminary issues which resulted in this adjournment. No details of the monetary claim have yet been discussed.

At the end of the initial hearing, the landlord argued that she was not served with the tenants' submitted documentary evidence.

On September 11, 2018 the hearing was reconvened with both parties present. The landlord stated that she did not receive any documentary evidence from the tenants as part of the Notice of Hearing package received by Xpress Post on May 16, 2018. The tenants argued that the documentary evidence was submitted and served as claimed as part of the Xpress Post package on May 16, 2018. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, I accept the direct testimony of both parties and find on a balance of probabilities that the tenants failed to serve the landlord with the submitted documentary evidence. The tenants were adamant that the documentary evidence was served, but was unable provide sufficient evidence to satisfy me of their claim. As such, the tenants' documentary evidence is excluded from consideration in this hearing.

During the hearing the tenants also argued that no documentary evidence was received from the landlord. I note that when question previously at the start of the hearing, the tenants had confirmed that they received the landlord's documentary evidence in person as claimed by the landlord on July 5, 2018, but that it was late. The tenants then stated that they were unsure whether they did or not receive the submitted documentary evidence. I find that the tenants conflicting and contradictory testimony on receiving the landlord's documentary evidence was without merit. The tenants provided undisputed affirmed testimony that they were not sure if they did or did not receive the documentary evidence. On this basis, I re-confirm my previous finding that the tenants were properly served with the landlord's submitted documentary evidence in person on July 5, 2018 as claimed.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the tenancy ended on July 17, 2018.

The tenants seek a monetary claim of \$520.47 (\$173.49 @ 3 months April 27, 2018 July 31, 2018(current time)).which consists of compensation for the loss of cable/internet services which were included as part of their tenancy agreement.

Extensive discussions were made in that both parties had difficulty communicating their issues and evidence. However the following was ascertained.

The tenants claim that the landlord removed services of cable/internet which resulted in the tenants' loss of value equal to \$173.49 per month for a three month period. The tenants stated that their tenancy began with the previous owner who then sold the rental property to the current landlord. The previous landlord then became a tenant of the current landlord. The tenants stated that their tenancy agreement was with the previous landlord and that it carried forward to the new landlord as no new signed tenancy agreement was made.

The landlord disputed the tenants claims stating that the named tenants are not their tenants' but were in fact just friends living with their tenants. The landlord argued that when their tenants vacated the rental unit in April 2018, the named tenants refused to vacate the rental unit. The landlord stated that an offer was made to make the named tenants their tenants by entering into a signed tenancy agreement which was provided them.

The landlord confirmed that no signed tenancy agreement exists with these two parties. The named tenants stated that they have been living on site since 2014 and that their friends, the tenants', (D. and L.) were in fact the previous owners who then became the tenants of the new owners, (S.K.). The landlord has referred to an email marked as A-1 an email from the tenant to the landlord's agent to J.T. Both parties confirmed the contents of the email that was sent from the named tenants to the named landlord. It states in part,

Hi S. & H.

As you know we have been renting here since September 2014 at \$800 per month permanently included all utilities (hydro, natural gas, cable vision package with high speed internet, private fenced back yard for our dogs only and our personal outdoor use, an area to park our trailer and the shed for our personal storage and a key to access to power box in the garage). PS: D. and L. always use the front are for personal use and outside cooking.

We have giving L. \$400 for damage deposit as all landlord ask for it before tenants move in. We send it by mail because we were living in Quebec at the time...

You wanted us to sign an agreement as if we are new tenants after being here for four years. Two years with D. and L. and almost two years with you as landlady.

You told us that you were our landlady after we put a latch on the door and D. came down screaming at us. You told us if we need anything to contact you because D. & L. were care taker here (fix stuff, cut the lawn, pick up our check for the rent) and cannot make decision for you and that you were our landlady...

A review of the landlord's documentary evidence also shows an email dated April 23, 2018 from D. (the upstairs tenants/previous owners) who states in part,

...She told us what S.'s offer is and asked that we contact you urging you to accept this offer or she will have no choice but to give you your notice to vacate. She does not want to do that if at all possible. She said S. will be raising the rent only to \$838.00 per month, and there would be no other changes except that you must get your own internet and cable...

Analysis

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, both parties rely heavily on the direct testimony provided during the hearing. However, the landlord has provided some documentation in the form of email communication between the named tenants, the named landlords and the upstairs tenants/previous owners. The tenants have claimed that the internet/cable services costing \$173.49/month were removed without compensation. The tenants claimed that these services were provided as part of their tenancy agreement, totaling \$520.47 for the three months from April 27, 2018 to July 17, 2018 based upon invoices provided by the previous owners. The landlord also submitted a copy of email correspondence between the parties confirming the difference in service costs. In contrast the named landlords have argued that the named tenants were not tenants, but were instead friends of the tenants/previous owners who were living with them. I find that the evidence relied upon by the tenants is inconclusive for me to make a finding. In reviewing the evidence referred to in these email communications, I can only find that an effort was being made to have the named tenants enter into a signed tenancy agreement with the named landlords. On this basis, the tenants' application is dismissed without leave to reapply.

Conclusion

The tenants' 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: September 11, 2018

Residential Tenancy Branch