



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The property manager, owner of the subject rental property and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was served the notice of dispute resolution package by registered mail but did not know on what date. The property manager confirmed receipt of the dispute resolution package on July 27, 2018. I find that the landlord was served with this package on July 27, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2016 and ended on July 4, 2018. Monthly rent in the amount of \$2,385.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$400.00 were paid by the tenants to the landlord. The subject rental property is a single-family home with a basement suite. The tenants rented out the entire house including the basement suite.

The landlord testified that on May 1, 2018 a Two Month Notice to End Tenancy for Landlord's Use with an effective date of July 31, 2018 (the "Two Month Notice") was placed in the tenant's mailbox. The tenants confirmed receipt of the Two Month Notice on May 1, 2018.

The Two Month Notice stated the following reason for ending this tenancy:

- 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).

Both parties agreed that pursuant to the Two Month Notice, the tenants received one month's free rent from the landlord.

The tenants testified that prior to receiving the Two Month Notice, the subject rental property was put up for sale and that they received viewing requests from the landlord's realtor until May 8, 2018. The tenants entered into evidence a text message dated May 7, 2018 from the landlord's realtor requesting to show the property the following day on May 8, 2018. The tenants testified that the property was listed for sale until at least July 7, 2018. The tenants entered online listings for the subject rental property showing same. The tenants testified that the for-sale sign in the yard was left up in the yard until the end of May 2018. A photograph showing same was entered into evidence.

Tenant J.C. testified that the realtor didn't give them back the keys to the subject rental property until June 2018. Tenant J.C. testified that in June 2018 she asked the realtor if the house was going to be sold and he told her that he didn't know what was going on.

The tenants testified that they do not believe the owner is living at the subject rental property. The tenants testified that after they moved out they returned to the subject rental property on August 10, 2018 to collect their mail sent to the subject rental property and that the house empty.

The tenants testified that they returned to the subject rental property on August 20, 2018 and a young man answered the door and said that he was the owner's cousin and that he and some other people were living in the basement suite and that they were looking for people to rent the rest of the house.

The tenants testified that they are seeking to recover the cost of their move out of the subject rental property from the landlord in the amount of \$900.00. A receipt for same was entered into evidence.

The tenants testified that they are seeking to receive 2 months' rent from the landlord because the owner of the subject rental property did not move into the subject rental property.

The tenants testified that they are seeking to receive the cost of their security deposit at their new rental property, in the amount of \$1,250.00 from the landlord.

The tenants testified that they asked the landlord if they could stay at the subject rental property until August 10, 2018 and that their request was denied. The tenants testified that since the landlord refused their request, they were unable to move out for the first of July and had to pay rent on two locations from July 1-4, 2018. The tenants are seeking to recover rent paid to the landlord from July 1-4, 2018 in the amount of \$320.00.

On the monetary worksheet submitted into evidence by the tenants, the tenants also claimed \$120.00; however, at the hearing the tenants were unable to recall what exactly they were seeking for that amount.

The tenants are also seeking to recover the \$100.00 filing fee from the landlord.

The landlord's agent testified that the owner verbally cancelled her contract with the realtor around May 7-8, 2018 and that shortly after that the realtor left town for approximately 2 weeks. The landlord's agent testified that the owner asked for the sign to be taken down but since the realtor was out of town for 2 weeks it did not get done right away. The landlord's agent testified that on July 31, 2018 the owner gave formal written notice to the realtor cancelling the contract for selling the subject rental property. The online listing was not removed until after the written notice was received by the realtor.

The landlord's agent entered into evidence an e-mail dated July 17, 2018 from the realtor to the owner and the landlord's agent which states that there was no sales activity from the realtors or the owner after May 7, 2018 when the owner informed him that she would be moving into the subject rental property. The email also stated that the realtor had not taken down the online listing because it was expiring in September and there were no showing scheduled.

The owner testified that she moved into the subject rental property the first week of August 2018 and has a number of relatives living at the subject rental property with her. The owner entered into evidence three gas bills which cover a date range from July 15, 2018 to October 1, 2018. The gas bills are addressed to the owner at the subject rental property. The owner entered into evidence two hydro bills which cover a date range from July 5, 2018 to October 5, 2018. The hydro bills are addressed to the owner at the subject rental property.

The property manager testified that she has personally visited the owner at the subject rental property since the owner moved in and verified that the owner does live at the subject rental property.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenants on May 1, 2018, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

On the date the Two Month Notice was served on the tenants, section 51(1) of the *Act* stated that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

On the date the Two Month Notice was served on the Tenants, section 51(2) of the *Act* stated that in addition to the amount payable under subsection (1), 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The testimony of the parties in regard to whether or not the owner of the subject rental property moved into the subject rental property is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenants have not proved, on a balance of probabilities that the landlord did not move into the subject rental property. Sections 49 and 51 of the *Act* are not breached if the landlord has allowed other occupants to move into the subject rental property with her. The owner has entered into evidence copies of hydro and gas bills at the subject rental address, in

her name from July -October 2018. I accept the owner's evidence and testimony that she moved into the subject rental property in the first week of August 2018.

As I have found that the owner moved into the subject rental property in the first week of August 2018, the exact date the owner ended her contract with the realtor and the date the listing was taken down is of little consequence because the landlord complied with section 51(2) of the *Act* by moving into the subject rental property within a reasonable period after the effective date of the Two Month Notice.

The tenants' monetary claim is predicated on the assertion that the owner breached section 51(2) of the *Act*; as I have found that the landlord did not breach section 51(2) of the *Act*, I dismiss the tenants' application 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: November 26, 2018

Residential Tenancy Branch