



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on November 29, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- return of their personal property.

Both sides attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants did not speak to or raise the issue of the return of their personal property, and only spoke to the compensation they wished to obtain pursuant to section 51 of the Act. As a result, I dismiss, without leave, the Tenants' request for the return of their personal property, as this issue was not raised or addressed at the hearing in any way.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,217.00 per month at the time the tenancy ended at the end of November 2017. The Tenants stated he was served a 2-Month Notice to End Tenancy (the Notice) in September of 2017. On page 2 of the Notice, the Landlord selected the following ground as the basis for the Notice:

- 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).

Subsequently, the Tenants stated that they moved out of the rental unit at the end of November 2017. The Tenants stated in the hearing that they believe the Landlords issued the Notice because they wanted to evict them, and potentially sell the house, not because any of them wanted to move in. As a result, the Tenants stated that the Landlords were not honest when they issued the Notice. The Tenants stated that they are also looking for their moving expenses (\$875.00) because they should not have had to move.

The Tenants stated that they have friends in and around the building where the rental unit is, so they were able to monitor the Landlord's use of the rental unit. The Tenants stated that they saw that the Landlords only used the rental unit 7 or so days from the period from December 1, 2017, until May 2018. The Tenants stated that they were also parking in the Landlords parking spot sporadically during this period, and there was never any issue, which shows that the Landlord was not living there as she said she was going to be under the Notice.

One of the Landlords, A.C., stated that she lived in Vancouver up until she moved into the rental unit. She further stated that starting in December 2017, shortly after the Tenants moved out, she booked an elevator (as per the evidence) to move some of her personal belongings into the unit. She further indicated that she took this period of time where she still had her place in Vancouver to do some renovations, and fixes. The Landlord provided a couple of invoices and receipts from December 2017 through till

February 2018 showing that she was fixing the unit and making it ready for her full time residence. The Landlord stated that she moved in, and stayed in the rental unit sporadically while she prepared, cleaned, and fixed the unit. The Landlord stated that she finally gave her notice at her residence in Vancouver for the end of April 2018. The Landlord stated that she currently lives in the rental unit, and that it was always her intention to do so. The Landlord stated that she ought to be able to fix the unit up, and she feels the Tenants are being greedy.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Tenants are seeking two month's rent in compensation, and moving costs, because they feel the Landlord did not move in and use the rental unit for the stated purpose on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenant would be entitled to if the Landlord did not use the property for the stated purpose for at least 6 months:

Tenant's compensation: section 49 notice

- 51** (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.

In this case, the Landlords issued the Notice in September of 2017, because one of the Landlords, A.C. was going to move in. I note the Tenants stated they were monitoring the Landlord and they did not see her move in. However, it is not clear how they would have known with any degree of certainty that the Landlord was only in the rental unit for 7 days over a period of months. The Landlord has stated that she moved her personal

belongings in early in December 2017. Subsequently, she stated that she did some fixes and repairs (drywall, painting, cleaning etc.) while she was staying there sporadically and on many occasions throughout the months of December 2017 until April 2018.

I find the evidence before me establishes that the Landlord was taking steps to accomplish the stated purpose (fixing and renovating) while she was in the process of moving in. Although this took a few months to complete, I note the Landlord had partially moved in and was still moving and wrapping up her tenancy in a different city. I do not find the timeline is unreasonable. The Landlord began moving in and fixing the rental unit shortly after the Tenants moved out, and I note the Landlord still occupies the rental unit as of this date (for over 6 months). I find the Landlord has used the rental unit in compliance with section 51, and I find the Tenants are not entitled to any compensation.

As such, I dismiss the Tenants' application on this matter. As the Tenants were not successful in this application, I decline to award the recovery of the filing fee paid to make this application.

Conclusion

The Tenants' application is dismissed, in full, 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 30, 2018

Residential Tenancy Branch