



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNRT

Introduction

This hearing was convened in response to an application by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*.

Both the landlord and the tenants appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenants’ application for dispute resolution and evidentiary package after it was given to him in person on November 26, 2018.

Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the evidentiary package and the tenant’s application.

The tenants confirmed receipt of the landlord’s evidentiary package after they were sent by way of Canada Post Registered Mail. Pursuant to section 88 of the *Act* the tenants are found to have been served with the landlord’s evidence in accordance with the *Act*.

Following opening remarks, tenant S.F.B. said he was no longer pursuing the portion of his application related to a broken window as that had been addressed by the parties prior to the hearing. Pursuant to section 64(3)(c) of the *Act* the tenants’ application is amended to reflect a new figure of \$23,000.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Background and Evidence

Testimony from the tenants explained this tenancy began in August 2015 and ended on September 2, 2018. Rent was \$1,150.00 per month and a security deposit paid at the outset of the tenancy was returned to the tenants following their move out.

The tenants sought a monetary award of \$23,000.00. They argued this amount represented a return of twelve month's rent at \$1,150.00 per month, along with their moving fee of \$200.00 and a return of four month's rent at \$2,250.00 per month.

The tenants explained they moved out of the rental unit following the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants said that after having moved from the property they had been told by other persons living near the rental property that the landlord did not move into the unit as he had indicated on the 2 Month Notice. Additionally, the tenants questioned the small hydro bill associated with the rental unit, stated they had been told by neighbours that "nobody" lived in the unit and tenant K.A.H. said she attended the property on several occasions only to discover it empty.

The tenants said they had faced an "unlawful" eviction and sought a return of four month's rent in their new home along with a return of the previous twelve months rent at the home they formerly occupied. As part of their evidentiary package, the tenants supplied two letters (one from each tenant) describing their entitlement to compensation.

The landlord disputed the tenants' allegations, saying that it was "his home", noting he occupied the unit from September 13, 2018 onwards. As part of his evidentiary package, the landlord provided a copy of his driver's license, insurance documents, a hydro bill, a signed and sworn affidavit and other personal papers. All of these items displayed the landlord's address as the unit in question. The landlord said he worked full-time and was not in the home "24 hours per day" but maintained his principle residence was the unit in question.

Analysis

The tenants have applied for a monetary award of \$23,000.00. They are seeking this amount in satisfaction for having vacated the rental unit under alleged false pretenses after having been issued a 2 Month Notice to End Tenancy based on the landlord's use of property.

Section 51(2) of the *Act* states, "The landlord must pay the tenant, in addition to the amount payable under subsection (1), an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purposes for ending the tenancy, or the rental unit is not used for that stated purposes

for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice."

Residential Tenancy Rule of Procedure 6.6 states as follows, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim."

After having reviewed the evidence submitted by both parties and following a close consideration of the sworn testimony of both parties, I find that the tenants have failed to provide sufficient evidence to support their assertion that the landlord did not use the rental unit for the purposes stated on the 2 Month Notice which led to the end of this tenancy. The tenants were unable to supply any letters or documentation from neighbours in support of their conclusion that the landlord did not occupy the suite, and I find the tenants relied heavily on testimony which was disputed by the landlord. In addition, the tenants repeatedly alleged without any evidence to support their claim, that the documents supplied in the landlord's evidentiary package were fraudulent. I find the documents supplied by landlord himself to be persuasive and I have little reason to dispute their authenticity. I accept the landlord's testimony that the rental unit in question is his home and I find he supported this argument through his evidentiary package which showed numerous documents in his name received at the address in question. For these reasons, I dismiss the tenants' application in its entirety.

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: December 13, 2018

Residential Tenancy Branch