



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 23, 2017 ("2 Month Notice") and for a monetary order in the amount of \$1,330.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

Neither party raised concerns regarding the service of documentary evidence. Both parties confirmed that they had the opportunity to review the evidence served upon them from the other party.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that the tenant vacated the rental unit on June 1, 2017. Consequently, the tenant was advised that I dismissed her application to cancel the 2 Month Notice as it is now moot, given that the tenancy ended on June 1, 2017, when the tenant vacated the rental unit.

In addition, the landlord confirmed their email address at the outset of the hearing. The tenant did not have an email address to provide at the hearing. The parties also confirmed their understanding that the decision would be emailed to the landlord and would be sent by regular mail to the tenant.

Issue to be Decided

- Is the tenant entitled to money owed or for compensation for damage or loss under the *Act*?

Background and Evidence

There is no dispute that the parties entered into a tenancy agreement sometime in 2015. Neither party could recall the exact start date of the tenancy. A copy of the tenancy agreement was not submitted in evidence. The parties also agreed that the tenant was served with a 2 Month Notice dated April 23, 2017, which included an effective vacancy date of July 1, 2017. The tenant vacated the rental unit on June 1, 2017, which was a month earlier than required. Although a copy of the 2 Month Notice was not submitted in evidence, the parties agreed that the reason stated on the 2 Month Notice was:

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).

The landlord testified that after the landlord received possession back of the rental unit on June 1, 2017, the plans for his mother to move into the rental unit changed; however, the landlord did indicate that he did not re-rent the rental unit until March 2018, which was nine months after the tenant vacated the rental unit. The tenant confirmed that she did not have any evidence to present that the landlord re-rented the rental unit before March 2018.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Black's Law Dictionary sixth edition defines the legal meaning of the word "occupy" as:

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

In addition, in April 2017, when the 2 Month Notice was issued, section 51(2) of the *Act* stated:

- 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.

[Emphasis added]

Based on the above, I find the landlord held possession of the rental unit which meets the definition of occupy for more than 6 months as required by section 51 of the *Act*. I find the tenant has failed to meet parts one and two of the four-part test for damages or loss as described above. Therefore, I dismiss the tenant's application in full without leave to reapply due to insufficient evidence.

Conclusion

The tenant's application has no merit and is dismissed without leave to reapply, due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 16, 2019

Residential Tenancy Branch