



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.

Both parties 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 they served their application for dispute resolution on the landlord via registered mail on December 7, 2018. The landlord testified that she received the tenants' application for dispute resolution on December 10, 2018. I find that the tenants' application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

Preliminary Issue- Landlord's Evidence

The tenants testified that they did not receive a piece of evidence that was uploaded to the Residential Tenancy Website labeled "I live here". The tenants testified that they were made aware of its existence when they called into the Residential Tenancy Branch and an Information Officer read out all of the evidence uploaded by the landlord.

The landlord testified that the document labelled "I live here" was served on the tenants with all the rest of their evidence via registered mail. The tenants confirmed receipt of

the rest of the landlord's evidence but testified that the "I live here" document was not included in that package.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that since the tenants did not receive the "I live here" document, it is excluded from evidence.

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 May 1, 2017 and ended on July 2, 2018. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The house is comprised of the main house and a basement suite. The subject rental house in its entirety was rented to the tenants.

The landlord testified that on April 27, 2018 a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of June 30, 2018 (the "Two Month Notice") was posted on the tenants' door. The tenants confirmed receipt of the Two Month Notice on April 27, 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).

The landlord's daughter testified that the Two Month Notice was served on the tenants because she got married and her and her husband wanted to move into the subject rental property. The landlord's daughter testified that she moved into the subject rental property with her husband on July 30, 2018.

The tenants testified that they don't believe that the landlord's daughter moved into the subject rental property. The tenants testified that on several occasions between October and December of 2018 they drove by the subject rental property in the evening, between 7 and 10 p.m., and the subject rental property did not appear to have any lights on. Photographs showing same were entered into evidence. The tenants testified that when they drove by the subject rental property, the landlord's daughter's car was never at the subject rental property.

The landlord's daughter testified that her and her husband work in the evenings and are therefore often not at the subject rental property in the evenings.

The tenants testified that they hired a process server to serve the landlord's daughter at the subject rental property and that the process server attempted to serve the tenants on three occasions, but no-one answered the door at the subject rental property. The tenants entered an affidavit of service into evidence stating same.

The landlord's daughter testified that she and her husband were not at home when the process server attempted service.

The tenants testified that the blinds of the subject rental property were removed and that on December 2, 2018 the tenants took a video from the outside of the subject rental property, looking inside the subject rental property. The video was entered into evidence. The December 2, 2018 video shows that the main portion of the house is completely empty. The video does not show the basement suite.

The landlord's daughter testified to the following facts. On December 2, 2018 she hired a company to re-finish the hardwood floors at the subject rental property. The floor needed to be bare for the work to be completed and could not be walked on for 72 hours. The landlord's daughter and her husband moved all of their belongings into the basement suite while the floors were being re-finished. The landlord entered into evidence a signed statement from the floor re-finishing company which states that the floor re-finishing company completed a hardwood flooring job at the subject rental property on December 2, 2018 and the floors could not be used for 72 hours after the work was completed. The landlord also entered into evidence a receipt for the

hardwood floor re-finishing which states that the landlord's account was paid on December 2, 2018.

The tenants testified that some of the renovation related receipts the landlord served on the tenants for a previous arbitration hearing are dated after July 30, 2018, including receipts for painting the subject rental property. The aforementioned receipts were entered into evidence. The tenants testified that they did not believe that the landlord's daughter and husband lived at the subject rental property during the renovations. The landlord's daughter testified that she lived at the subject rental property since July 30, 2018 and has completed renovations on an ongoing basis since that date.

The tenants entered into evidence a BC Hydro bill with a service period from November 21, 2017 to January 18, 2018 which shows that the tenants used 4529 kW.h for 59 days. The tenants entered into evidence photographs of the BC Hydro meter at the subject rental property showing that the BC Hydro meter read 83784 kW.h on December 1, 2018 and 83875 on December 31, 2018. The tenants testified that the difference between the readings shows that the subject rental property only used 91 kW.h worth of electricity whereas when they lived at the subject rental property during the winter, they used approximately 4529 kW.h for a 30 day period. The tenants testified that the electricity consumption for the subject rental property from December 1-31 would not have been 91 kW.h if they landlord's daughter and her husband lived at the subject rental property.

The landlord's daughter testified to the following facts. Her electrical consumption was considerably lower than the tenants because it is only her and her husband living at the subject rental property whereas the tenants were living at the subject rental property with their children. In an effort to save money, she and her husband only turned on the heat in the room they were occupying and did all of their laundry at her mother's house. She replaced all of the incandescent bulbs with energy saving lights bulbs. The tenants are not experts with regards to BC Hydro meters and the readings alone don't mean anything.

The landlord entered into evidence the following documents to support the landlord's daughter's testimony that she resides at the subject rental property and has since July 30, 2018:

- Signed affidavit from the landlord's daughter and the landlord's daughter's husband stating that they reside at the subject rental property and have done so since July 30, 2018;

- Photograph of the landlord's daughter's driver's license which shows the address of the subject rental property. The issue and expiry date are blacked out;
- The landlord's daughter's Visa statement from August 11, 2018- February 11, 2019 which list the subject rental property as the landlord's daughter's address;
- The landlord's daughter's Amazon orders dated between December 2018 and January 2019 showing that the items were successfully delivered. The billing address on the Amazon orders is that of the subject rental property.
- The landlord's daughter's online receipt for a charity lottery which shows that the mailing address for the landlord's daughter is that of the subject rental property.
- A statement signed by five of the landlord's daughter's neighbours confirming that the landlord's daughter and her husband have been living at the subject rental property since July 30, 2018. Phone numbers for the neighbours were provided on the statement.

The tenants testified that since the landlord's daughter's issue and expiry date on her driver's license are blocked out, it is not possible to tell if this is a current license. The landlord's daughter testified that she only blocked them out because she was not comfortable with all of her personal data being released to the tenants as she already feels like they are stocking her and taking pictures of her home.

The tenants testified to the following facts. The Amazon orders only show the billing address, not the shipping address, so these orders do not prove that the items purchased from Amazon were shipped to the subject rental property. The copy of the statement from the neighbours that was provided to the tenants had the phone numbers blocked out and none of the names were familiar to the tenants.

The landlord asked me to call two of the neighbours as witnesses. Neither of the landlord's witnesses agreed to provide testimony for this hearing.

The tenants are seeking 12 months rent, for a total of \$20,400.00, as compensation for the landlord's daughter not moving into the subject rental property.

Analysis

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.

On May 17, 2018 changes to the *Act* came into effect which changed the amount payable from a landlord to a tenant under section 51(2) of the *Act* from double the monthly rent payable to 12 months' rent. This change came into effect after the tenants received the Two Month Notice; therefore, the tenants are only entitled to claim double the monthly rent payable under the tenancy agreement.

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 photographs of a house without lights on does not prove that the house is unoccupied. The landlord's daughter provided a reasonable explanation as to why the lights are frequently off during the evening- her and her husband work in the evenings.

I find that the fact that a process server tried on three attempts to serve the landlord's daughter at the subject rental house does not prove anything other than the tenants were not at home when the process server attended at the subject rental property.

I accept the landlord's daughter's testimony that she lived at the subject rental property during renovations.

I find the fact that the December 2, 2018 video shows the subject rental property to be empty to be in accordance with the landlords' daughter's testimony that she was having her floors re-finished. The landlord's daughter's testimony is also supported by the signed statement of the flooring company and the receipt indicating that payment was made on December 2, 2018. I accept the landlord's daughter's testimony that she had

the floors of the main portion of the subject rental property refinished on December 2, 2018.

I find the BC Hydro evidence to be unhelpful as the tenants did not provide any evidence from BC Hydro regarding what a differential reading of 91 Kw.h means. I find that the correlative data between the tenants' usage and the landlord's daughter's usage may have been explained by the landlord's daughter's electricity usage but that I cannot make a finding without further evidence. I find that the tenants have not proved, on a balance of probabilities that the landlord's daughter's BC Hydro usage was not possible if she lived at the subject rental property.

I find that the tenants have not proved, on a balance of probabilities, that the landlord's daughter did not move into the subject rental property. The landlord's daughter has provided a reasonable explanation for all of the tenants' evidence and has provided numerous pieces of documentation showing that she resides at the subject rental property. I therefore dismiss the tenants' application without leave to reapply.

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

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: April 2, 2019

Residential Tenancy Branch