



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 tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant KH (the "tenant") primarily spoke for both co-tenants. Counsel confirmed they represented both named respondents.

As both parties were present service of documents was confirmed. The landlord confirmed they had been served with the tenants' application and evidence. The tenant confirmed they had been served with the landlord's evidentiary materials. Based on the testimonies I find that both parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant said that the figure on their application is based on a calculation error. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as corrected a calculation error is reasonably foreseeable, I amend the tenants' application to decrease the monetary claim from \$17,600.00 to \$16,200.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee for their application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, correspondence, affidavits, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This tenancy ended in early October, 2018. The monthly rent was \$1,350.00 payable on the first of each month. The parties agree that the security deposit for this tenancy has been returned and there is no amount owing for monthly rent.

The landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use dated April 29, 2018. The reason provided on the 2 Month Notice is that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The tenant submits that the landlord did not occupy the rental unit until after they had filed and served their application for dispute resolution in December, 2018. The tenant confirmed that since December, 2018 they believe the landlord is occupying the rental unit. Prior to that time the tenant submits that based on their observation of the property and the landlord's previous address, they believe the rental unit was left unoccupied for several weeks.

The landlord submits that they are the owner of their previous address and the rental unit. The landlord submits that they moved into the rental unit in November, 2018 and have resided there ever since. The landlord submits into documentary evidence affidavits from neighbors who attest to their belief that the landlord has occupied the rental unit since November, 2018.

Analysis

Section 51(2) of the *Act* provides that a tenant who receives a notice to end tenancy for landlord's use of property is entitled to an amount equivalent to 12 times the monthly rent if steps have not been taken within a reasonable time to accomplish the stated

purpose for ending the tenancy and the rental unit is not used for that purpose for at least 6 months.

In the present case the landlord issued the 2 Month Notice indicating that the rental unit would be occupied by the landlord or their close family member. The tenants confirmed that they believe the landlords are currently occupying the rental unit and moved in sometime in December, 2018 after they had been served with the tenant's application for dispute resolution. The landlord gave evidence that they moved in a few weeks earlier in November, 2018.

The tenant submitted evidence regarding their ongoing disagreements with the landlords including police reports and complaints I find that this is irrelevant to the matter at hand. I accept the evidence of the parties that the landlords occupy the rental unit and have been doing so since either November or December, 2018. I accept the evidence of the tenants that they vacated the rental unit on or about October 3, 2018. Based on the evidence I find that the landlords moved into the rental unit sometime between 4 and 8 weeks after the tenancy ended.

While the tenants submit that the landlord did not move into the rental unit until they had filed and served their application for dispute resolution I find that this does not alter the undisputed fact that the landlords moved into and are occupying the rental unit. Even if I were to accept the tenants' timeline, that the landlord did not occupy the rental unit until December, 2018, I find the timeline for the landlord to move into the rental unit to be reasonable. I do not find that it was unreasonable for the landlord to fail to occupy the rental unit immediately upon the tenants' departure.

Based on the evidence I find that the landlord acted reasonably and have accomplished the purpose stated on the 2 Month Notice within a reasonable timeframe. As such, I find that the tenants have not established that there is a basis for their monetary claim and it is dismissed.

Conclusion

The tenants' application is dismissed in its entirety 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 9, 2019

Residential Tenancy Branch