



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order in the amount of \$20,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant, the landlord and an agent for the landlord OC ("agent") 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 relevant documentary evidence. Both parties confirmed that they had the opportunity to review the relevant evidence served upon them from the other party.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that a copy of the decision would be sent to the email addresses for each party confirmed during the hearing.

Issue to be Decided

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

Background and Evidence

The parties agreed that they entered into a tenancy agreement as of July 2013. The parties confirmed that the tenancy ended on November 30, 2018, based on an order of possession granted following a disputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 13, 2019 ("2 Month Notice").

Although the 2 Month Notice included an effective vacancy date of October 31, 2018, the order of possession was granted effective November 30, 2018, as the landlord agreed to extend the order of possession date for one month for the tenant. That previous decision file number has been included on the cover page of this decision for ease of reference and will be referred to for the remainder of this decision as "previous decision". 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).

In the previous decision, the arbitrator writes the following:

The Landlord testified that one of his sons will be moving into the rental unit. The son present at the hearing confirmed that his brother is moving into the lower level unit, and he will be moving into the upstairs unit once renovations in both units are completed. A letter from the son moving into the lower level unit, dated September 1, 2018 was submitted into evidence. The letter states his intent to move into the rental unit.

In the matter before me, the tenant is alleging that the landlord has issued the 2 Month Notice in bad faith as she found it "curious that the landlord evicted me in November 2018 and that his son did not move into the rental unit until April 2019." The tenant also referred to a colour photograph submitted in evidence that shows three paint cans and two doors off their hinges, a water bottle and some cardboard.

The agent testified that it was always the landlord's intention to do some work in the home and the landlord has done primarily painting and new cabinets. The agent also referred to a letter signed by the landlord's son, RC, which confirms that RC moved into the rental unit as of April 20, 2019. The tenant did not dispute the authenticity of the signed letter from RC during the hearing.

The agent denied that the rental unit has been rented to anyone since November 2018 and that RC has now moved into the unit, once the work was completed by the landlord including painting and new cabinets.

The tenant had no evidence to support that the rental unit had been re-rented since November 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]

Section 51(2) of the *Act* states:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), **an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if**

(a) **steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or**

(b) **the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[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*. This time period was from November 30, 2018 to the date of this hearing June 13, 2019, which I find is almost 7 months. Also I find there is no evidence before me that the landlord re-rented the rental unit during the 7 month time period between November 30, 2018 and the date of this hearing, June 13, 2019. The tenant's "curiosity" as to why it took so long to do the work in the rental unit does not meet the burden of proof and I find that it is insufficient evidence that bad faith occurred.

In the previous decision, the arbitrator was clearly aware that the landlord intended to do work in the rental unit before his son was to occupy it, which has been noted above. Therefore, I find the landlord did occupy the rental unit for more than 6 months in accordance with the reason stated on the 2 Month Notice. Based on the above, 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.

The decision will be emailed to both parties as indicated above.

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: June 13, 2019

Residential Tenancy Branch