



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 sections 51(2) and 67; and
- authorization to recover the filing fee for this application 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.

Preliminary Issue - Service of Documents

As the Respondents both confirmed that they had received copies of the tenants' dispute resolution hearing package in late May 2019, I find that both Respondents were duly served with this package in accordance with section 89 of the *Act*.

Tenant NkG testified that she believed that all of their written evidence was included with the copy of the dispute resolution hearing packages provided to the Respondents. Both Respondents testified that they did not receive any photographs as part of those packages, photographs and a screenshot of a listing on a popular rental website. The only other written evidence provided by the tenants was a copy of the Residential Tenancy Agreement (the Agreement) between the parties and a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). The Respondents' only written evidence was an identical copy of the Agreement. Respondent GT said that they did not provide a copy of the Agreement, as Respondent

GT knew that the tenants already had that document in their possession. Since both parties clearly had identical copies of the Agreement and agreed as to the contents of the 2 Month Notice provided to the tenants by the landlord on or about February 28, 2019, I accepted that the parties were aware that the Agreement and the 2 Month Notice would be considered as part of the hearing of the tenants' application. I have taken both of these documents into consideration in reaching my decision.

As I was not satisfied that the tenants had included copies of their photographs to the Respondents, I have not considered that information, as it was not served in accordance with section 88 of the *Act*. However, I allowed the tenants to describe the contents of their photographic evidence, primarily a copy of the advertisement for this rental unit placed on a popular rental website by the agents of the owners of this property.

Preliminary Issue - Have the Respondents been correctly identified in the Tenants' Application?

Respondent GT maintained that as his name was not on the Agreement as a landlord that the tenants had erred in identifying him as a Respondent in their application. Respondent GT said that the Agreement clearly showed his two parents as the owner of this property and that he had no financial interest in this property or in the relationship between the tenants and the owners of the property, his elderly parents. Respondent CY also maintained that he signed the Agreement on behalf of Respondent GT's parents who do not live in this province.

Tenant NkG gave undisputed sworn testimony that their monthly rent payments were made to Respondent GT, and he forwarded those payments to the owners of the property, Respondent GT's parents. Respondent GT testified that monthly rent payments were made by e-transfer to Respondent GT, and these funds were then redirected by him to his parents.

The definition of a landlord as set out in section 1 of the *Act* includes the following:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;...

Based on the sworn testimony of the parties and the wording of the Agreement, I advised the parties at the hearing that both Respondents are landlords for the purposes of the *Act*, as they acted on behalf of the owner as agents for the owner of this property. In the case of Respondent CY, they signed the Agreement as the owner's agent. In the case of Respondent GT, they performed duties under the *Act* as the recipient of the tenants monthly rent payment.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy pursuant to section 51(2) of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord(s)?

Background and Evidence

On March 19, 2016, the tenants and Respondent CY, acting as the owners' representative, signed the Agreement. This tenancy for a three bedroom basement suite was initially a one-year fixed term Agreement, starting on April 1, 2016. When the initial term ended, the tenancy continued as a month-to-month tenancy. Monthly rent was \$1,200.00, payable in advance on the first of each month throughout the course of this tenancy. The landlords have returned the tenants' \$600.00 security deposit.

On February 28, 2019, the landlords issued the tenants the 2 Month Notice, that was to have ended the tenancy by April 30, 2019. At this hearing, the parties agreed that the tenants surrendered vacant possession of the rental unit to the landlords by March 31, 2019. The reason identified in the 2 Month Notice was for landlord's use of the property. The tenants gave undisputed sworn testimony that they were told that the landlords planned to have their son, Respondent GT and his wife reside in the rental unit after the tenants vacated the rental unit.

The tenants' application for a monetary award of \$14,400.00 was filed pursuant to section 51(2) of the *Act*, as the tenants maintained that the landlords did not use their rental unit for the purposes stated in the 2 Month Notice. The tenants gave undisputed sworn testimony that they became aware from a friend who was seeking accommodation that this rental unit had been renovated and was being advertised as

being available for rental on a popular rental website little more than a month after the tenants vacated the rental unit. The asking monthly rent for their renovated suite was \$2,000.00, \$800.00 more than the tenants had been paying. The tenants said that they were never approached by the landlords to see if they were interested in renting the premises once renovations were completed. The tenants said that they had to pay \$800.00 more in rent at their new apartment than they had been paying.

Respondent GT testified that their parents were unaware of the legislation preventing landlords from using premises for purposes other than those stated in the 2 Month Notice. Respondent GT said that the plan for the rental unit had been to have their parents move into the rental unit Respondent GT had been living in previously above the tenants. Respondent GT and his wife would then move into part of the tenants' rental suite, which would be partitioned off from the rest of the basement suite. Respondent GT said that shortly after the tenants filed their application for dispute resolution, Respondent GT and his wife occupied one of the three bedrooms in the renovated basement suite, which the tenants had previously been using as a living room.

Respondent GT confirmed that their parents did have an agent list the tenants' rental suite on a popular rental website. Respondent CY confirmed that they accompanied the tenants' friend in a visit to the rental suite when that friend enquired about the availability of the rental suite. Neither Respondent denied Tenant NaG's assertion that the listing of the rental suite was for a three bedroom suite or that the monthly rent requested in the advertisement was for \$2,000.00. The Respondents maintained that the listing did not accurately identify that this was a partitioned suite and that Respondent GT would be using one of the rooms in the basement previously part of the space rented to the tenants. Although Respondent GT said that he had text messages with his parents to confirm this plan for the tenants' rental suite, he did not enter these into written evidence as he did not believe that he had been properly identified as a Respondent in this hearing. The Respondents said that they received few enquiries with respect to the advertisement on the rental website and that the remainder of the suite remains vacant, and that there is no intention to rent it out at this time. Respondent GT said that they tried to remedy this situation as soon as possible by moving into part of the rental suite after receiving the tenants' application. Respondent GT testified that he knew that his parents had "screwed up" but that the intention was never to evict the tenants illegally or to end this tenancy for improper purposes.

Analysis

Sections 51(2) and (3) of the Act read in part as follows:

(2) Subject to subsection (3), the landlord ..., 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.

(3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, I find that there is clear evidence that the landlords renovated the rental suite shortly after obtaining vacant possession from the tenants. The landlords then placed an advertisement on a popular rental website as to the availability of a three bedroom rental suite for a monthly rent more than \$800.00 higher than what the tenants had been paying. I find little evidence, other than Respondent GT's sworn testimony, that the advertised rental suite was for only a portion of the premises previously occupied by the tenants. In fact, not only was it listed as a three bedroom rental suite, which would have included all of the premises previously used by the tenants, but Respondent CY showed that space to the tenants' friend, without mentioning that the \$2,000.00 asking rent was to not include the area previously used by the tenants as their living room. I give little weight to Respondent CY's testimony that they planned to

alert prospective tenants to the partitioning of the rental unit after they became interested in the rental suite.

There is also undisputed sworn testimony that Respondent GT and his wife did not occupy any portion of the tenants' former rental suite until after the tenants filed their application for this sizeable monetary award. With all due respect, by that time, I find that it was too late for the landlords to have attempted to remedy the error in their ways. By the date of the tenants' application, the landlords had already completed major renovations and had attempted, albeit unsuccessfully, to attract a tenant who would pay much more in monthly rent than the tenants had been paying. I give little weight to Respondent GT's claim that they occupied a portion of the tenants' former rental suite in late May 2019. This action seems to have been taken as a way of attempting to undo the landlord's recent attempt to use the premises for purposes not identified in the 2 Month Notice, and to avoid a finding detrimental to the Respondents in a hearing of this application.

Under these circumstances, I find that the tenants have demonstrated on a balance of probabilities their entitlement to a monetary award pursuant to section 51(2) of the *Act* equivalent to the value of twelve months rent at the rate they were paying during their tenancy. Since the tenants were paying \$1,200.00 in monthly rent, this enables them to obtain their requested monetary award of \$14,400.00, the equivalent of twelve month's rent.

In making this determination, I have considered whether the Respondents have established sufficient grounds pursuant to section 51(3) to enable me to excuse the landlords from making this payment on the basis of extenuating circumstances. I find no such circumstances in place with respect to this tenancy. The landlords' actions are consistent with the behaviours of a landlord who issued the 2 Month Notice for landlord's use of the property, then renovated the rental unit and attempted to rent it to new tenants for a significantly higher monthly rent. Section 51(2) of the *Act* was revised to prevent landlords from taking such actions.

As the tenants have been successful in their application, I allow them to recover their filing fee.

Conclusion

I issue a monetary award in the amount of \$14,500.00, which allows the tenants the equivalent of twelve month's rent and the recovery of their filing fee.

The tenants are provided with these Orders in the above terms and the Respondent(s) must be served with this Order as soon as possible. Should the Respondent(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: August 29, 2019

Residential Tenancy Branch