



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$22,500.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee.

The Tenants and the Landlord, L.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?

- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2016 running to November 1, 2018, at which time it became a month-to-month tenancy. Initially in the hearing, the Parties disagreed about the amount of rent the Tenants paid the Landlords each month, given that it varied depending on their cable costs. However, ultimately in the hearing, the Parties agreed that the Tenants paid the Landlords a monthly rent of \$1,935.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$925.00 and no pet damage deposit. The Parties agreed that the rental unit is a suite on the main floor of a house that also has a downstairs rental suite that was rented to "J".

The Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice"), which:

- is signed and dated June 26, 2019,
- has the rental unit address,
- was served on the Tenants in person on June 27, 2019, and
- has an effective vacancy date of August 31, 2019,

The grounds for the eviction set out on the Two Month Notice are that "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 Tenants applied for compensation from the Landlords, because the Tenants believe the Landlord(s) did not use the property for the stated purpose in the Two Month Notice. The Tenants applied to recover compensation of \$22,500.00, pursuant to section 51(2) of the Act. The Tenants' evidence consists primarily of photographs from neighbours who believe that the Landlords have not moved into the residential property, and that the downstairs tenant, J., has moved to the Tenants' former rental unit.

The Landlord said that she and her husband are having marital difficulties and that they have separated. She said this was the reason they gave the Tenants the Two Month Notice. The Landlord said she lives in the former rental unit part time and at the family home part time when her husband is out of town. She said she and her husband want to avoid disrupting their children's lives as much as possible; therefore, the children have remained in the family home near their school, and the parents take turns living there with them. The Landlord acknowledged that she does not live in the rental unit full time, but she said she uses it pursuant to the stated purpose on the Two Month Notice.

The Tenants agreed that they are aware of the Landlords' personal issues and that they have talked with the Landlords about it; however, the Tenants argued that evidence from neighbours belies the Landlord's evidence that she lives in the rental unit.

In the hearing, the Tenants said that a neighbour, R., took pictures of the back of the residential property and noticed that the tenant from the lower unit was moving her outdoor furniture from the back suite up to the deck of the main level of the house. I have reviewed the photos from the Tenants' Appendices and find that there are miscellaneous items on the back deck of the house in the photos, but no supporting evidence of to whom the items belong.

The Tenant directed me to an audio conversation she said occurred on August 3, 2019, between the Tenant, J.N., and the lower suite tenant, J. I found it very difficult to hear the woman in the recording; it mainly consisted of the Tenant asking her if she is living upstairs now. The Landlord said she heard this recording and that she found it to be muffled and difficult to understand what was being said.

The Landlord said that J. does not have keys to the main floor suite; however, the Landlord also said that she has asked J. to turn on lights in the unit when the Landlord is away. The Landlord said that she had the house re-keyed before she moved in.

The Landlord said:

I paid [the Tenant] \$500 for her flowers. I wouldn't have spent the money, if I was just going to give that to another tenant. I know they feel some sort of ownership of our home, but there is zero evidence of why I would want to evict them. They have been absolutely perfect. However, they've caused so much havoc with the neighbours. They spy on me. [My husband's] parents have stayed there and say people are staring at you at all times. I know, I say just wave at them. They haven't submitted any evidence that I'm not there. I'm not going to let someone threaten me and sue me for money.

The Tenants submitted eleven photographs labelled E1+ and F1+ of a house. They said the photographs were of the residential property. There were no people in most of the photographs. The Tenants claim that the items on the upper deck belong to J. from the lower unit. They have not directed my attention to statements from J. saying that she lives there and that these are her belongings. One photo description says that it is from a neighbour's driveway showing the house with lights on inside, "and no landlord"; however, it does not indicate how the photographer knows that the Landlord is not in the suite.

The Tenant said: "There is no evidence that [L.D.] has formally moved into the residence, but all of our evidence has verified our suspicions." She pointed to evidence of a photograph she said was taken by a neighbour on September 1, 2019, showing a vehicle in the residential property

garage and another vehicle in the driveway. In a written statement describing this photo, she said:

The car along side of the garage is believed to be the new tenant in the basement suite. There are 2 additional white vehicles parked in the driveway that are unknown, possibly visiting. The 1st bay garage is open with [J.'s] van parked in it. Again this was part of our rental agreement and was where we parked.

The Landlord said that J. has a garage door opener, "...so that she can sometimes park in the garage when I'm not around. I wouldn't have spent the money to get the whole place re-keyed if I wasn't moving in."

The Tenant directed my attention to Appendix F of their evidence from a witness, R.G.; however, when I searched for Appendix F and the person's name, no results appeared.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A party who applies 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.

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.

In this case, the Tenants have the burden of proving on a balance of probabilities that the Landlords did not use the rental unit for the stated purpose of the Two Month Notice.

I find that the Tenants provided numerous photos of the residential property taken by neighbours from various perspectives; however, I did not find that these photographs demonstrated anything other than people coming and going from the residential property.

The Tenants' audio recording of the Tenant, J.N., talking to a woman they say is the downstairs tenant, J., is not intelligible; it is not clear what the woman is saying in answer to J.N.'s pointed questions about where she lives.

When I consider the evidence before me, overall, I find that the Tenants have provided insufficient evidence to refute the Landlord's testimony that she lives in the rental unit when her husband is at their family residence. I find that the Landlord's version of events rings true and

the Tenants' evidence consists of suspicions, speculation and indeterminate photographs and audio recordings.

Accordingly, I dismiss the Tenants' Application without leave to reapply. Given that the Tenants were unsuccessful, I decline to award them recovery of the Application filing fee.

Conclusion

The Tenants are unsuccessful in their Application. The Tenants provided insufficient evidence that the Landlord(s) did not move into the rental unit, pursuant to the Two Month Notice served on the Tenants. The Tenants' Application is dismissed wholly without leave to reapply.

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 9, 2020

Residential Tenancy Branch