



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERLINK (2008) REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, 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 \$30,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a monetary order for the return of \$350.00, the outstanding security deposit, and to recover the \$100.00 cost of their Application filing fee.

The Tenants, two agents for the Landlord, A.S. and D.F. ("Agents"), and the Landlord's counsel, M.T., ("Counsel"), 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 Agents 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; 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.

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 their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the initial, fixed term tenancy began on November 1, 2013. They agreed that they signed a new tenancy agreement in January 2018 for a fixed term tenancy that would run from February 1, 2018 to January 31, 2019. The Parties agreed that the monthly rent was \$2,500.00 under the new agreement. The Parties disagreed on the amount the Tenants paid the Landlord for a security deposit, although, they agreed that the Tenants had originally paid the Landlord a \$900.00 security deposit and a \$400.00 pet damage deposit.

Two Month Notice – Accomplishing Stated Purpose

The Two Month Notice to End Tenancy for Landlord's Use of Property was signed and dated April 30, 2019 ("Two Month Notice"), had the rental unit address, was served in person on April 30, 2019, with a vacancy effective date of July 1, 2019. The ground for the eviction set out on the Two Month Notice was that "the rental unit will be occupied by the Landlord or the Landlord's close family member...".

The Parties agreed that the Agents also gave the Tenants a Mutual Agreement to End Tenancy signed and dated April 27, 2019 ("Mutual Agreement"), by the Landlords, and signed and dated May 1, 2019 by the Tenants. The Parties agreed that the Agent proposed the Mutual Agreement to the Tenants on April 27, 2019, but that the Tenants resisted, because they did not want to move out. The Tenants said they were hoping the new owner would like them and want them to continue renting. The Tenant said she was also concerned about their own tenant in the downstairs suite.

In the hearing, in answer to Counsel's questions, the Agent, A.S., initially said he gave the Tenants the Mutual Agreement, on April 27, 2019, which he said had already been signed by the Landlord, but that the Tenants would not sign it. A.S. said: "When I gave it to her I explained that it is a mutual agreement and they would be compensated with an extra month. She right away said, 'what about the tenant downstairs?' You can compensate your tenant downstairs with this", A.S. said.

Later in the hearing, A.S. said that he gave the Mutual Agreement and the

compensation proposal to the Tenants on April 30, 2019, in contrast to what he had said about having given them to the Tenant on April 27, 2019. As was discussed in the hearing, the Mutual Agreement provided to the Tenants had wording at the top of the form blacked out. The form number at the bottom of the Mutual Agreement form submitted was consistent with the current form number on the RTB website. Therefore, I find that the blacked-out wording in the form served on the Tenants states:

This form is not a notice to end tenancy. Neither the landlord nor the tenant [is] under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were served with a notice to end tenancy. If you have any questions about your rights or responsibilities under the *Residential Tenancy Act*... contact the Residential Tenancy Branch by using the contact information at the bottom of this form.

[emphasis in original]

In the hearing, the Tenant said that A.S. gave her the compensation agreement on May 1, 2019; she said she signed and emailed it back to him on May 2, 2019. The Tenant said that the Landlord did not withdraw the Two Month Notice they had served her with on April 30, 2019. She said that the Agent offered the Tenants two months' free rent, with the last month in cash if the Tenants moved out before June 1, 2019, a month earlier than the Two Month Notice required.

Counsel pointed out that there is a conflict between what A.S. said in the hearing and what he told Counsel earlier, which Counsel said he used to prepare the three-page summary, which is at the beginning of the Landlords' submissions ("Summary").

In the Summary, the Landlord's evidence is that later in May 2019, the Tenants informed the Agents that they had found alternate accommodation and would be moving before June 1, 2019.

Security Deposit

The Parties agreed that the Tenants initially paid the Landlords a security deposit of \$900.00, which represented half the amount of the monthly rent at the start of the tenancy. They agreed that when the Tenants took over more of the residential property and signed a new lease that the rent went up to \$2,500.00. They agreed that half of this

monthly rent was \$1,250.00, and that the Tenants were required to pay the Landlords the difference between the initial security deposit paid and the new amount required or \$350.00.

The Tenants said that when they executed a new tenancy agreement with the Landlords in the basement suite of the residential property, and that they gave the Agents or the Landlords the \$350.00 in cash. The Tenants said they asked for a receipt for this payment, but that the Agent, A.S., told them that the note on the tenancy agreement was their receipt.

The Agent, A.S., agreed that the Parties signed a new tenancy agreement at the residential property, and that the Tenants were supposed to pay the additional \$350.00. The Agent said:

We all left, and my office never received it. She would mostly deposit money into our trust account. Later she said that she paid. I asked how she paid, and she said, 'I don't remember, but I paid it.' My question to her is how did you pay? In this case, we didn't have any receipts. I would have remembered it if we had received the cash, so that \$350.00 was never paid.

In the hearing, the Tenants asked that if the \$350.00 was not paid, why did the Landlords or Agents not address the missing security deposit money in the two years the Tenants lived there, pursuant to that tenancy agreement?

The Agent said:

Why didn't we go after them for it? I did call them a couple times, and she always paid the rent from the bank; that's how I thought she would be paying it. It was delayed and things happen.

The Tenants pointed to the Agents' submissions at the second page of Exhibit 1, which is a tenancy agreement with handwriting on the top of the first page saying: "2nd Agreement". On the second page, the first paragraph starts:

SECURITY DEPOSITS A security deposit of \$1250.00 has been received with this agreement and will be returned, including accrued interest earned (*Residential Tenancy Act* Sec.17), at the end of the tenancy after the premises have been inspected and found to be in a condition satisfactory to the landlord and/or his agents.

I note the “1250.00” was handwritten on the typed document. Further, at the bottom of the previous page of the tenancy agreement, the following is handwritten: “*PET DEPOSIT - \$400.00 (Already paid to [Agents’ company] on November 1, 2013”.

The Agent, A.S., said:

We wrote this ‘\$1250’ because documents had to be filled out, but it was not paid. I missed writing that \$350.00 had to be paid. Even if she paid the difference, did she get a receipt? If she had paid cash, I would have given her a receipt. I always carry receipts in my briefcase.

The Agent, D.F., said: “It’s a matter of [A.S.’s] evidence that he is sure that no payment was received, and that he didn’t give a receipt. We acknowledge that the tenancy agreement has the words on it that it was received.”

The Tenant said: “I put the money on the counter and maybe the owners took it. We counted it out on the counter.”

A.S. said: “In the past when you gave me the receipt, I’d give you a cheque – everything was documented.”

Analysis

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

Two Month Notice – Accomplishing Stated Purpose

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated April 30, 2019, the Agents indicated that the Landlord or a close family member, intends to occupy the rental unit. The Parties' agreed that rather than the Landlord or a family member having occupied the residential property pursuant to the stated purpose of the Two Month Notice, the residential property was sold to a third party on August 17, 2019.

I find that the Mutual Agreement was signed by both Parties by May 2, 2019, and that the Two Month Notice was never withdrawn by the Landlord or Agents. I find that the compensation provided to the Tenants pursuant to the Mutual Agreement supplemented, rather than replaced the compensation granted to a tenant under section 51(1) of the Act. Further, I find that the Agents were remiss in having blacked out the above noted information on the Mutual Agreement. I find this undermines the Agents' credibility and the reliability of their evidence.

I accept the evidence that the Landlords did not use the rental unit for the purpose stated on the Two Month Notice. Consequently, and pursuant to section 51(2) of the Act, I find that the Tenants are entitled to a monetary award of \$30,000.00, the equivalent of 12 times the monthly rent of \$2,500.00 payable under the tenancy agreement. I, therefore, grant the Tenants an award of **\$30,000.00** from the Landlords.

Security Deposit

When I consider the evidence before me, overall, I find that the Agent, A.S., exhibited difficulty remembering details surrounding this matter. As Counsel mentioned in the hearing, this is an issue that comes down to credibility. I find that the Tenants' evidence was more credible, as they recalled details such as "counting [the \$350.00] out on the counter". Also, the Tenants' version of events is consistent with the notation on the new tenancy agreement. These examples have a ring of truth to them and again, Agent A.S.'s testimony was internally inconsistent and, therefore, unreliable at times.

I find on a balance of probabilities that it is more likely than not that the Tenants paid the extra \$350.00 in cash when they signed the new tenancy agreement. I find it more likely than not that the Agent did not have receipts with him, so he relied on the tenancy

agreement as a receipt. Therefore, I find the Landlords were remiss in not reimbursing the Tenants for the full security deposit they paid. I award the Tenants recovery of the **\$350.00** security deposit that was not reimbursed by the Agents initially.

As the Tenants were successful in their Application, they are also entitled to recover the **\$100.00** filing fee for a total Monetary Order of **\$30,450.00** from the Landlords.

Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of **\$30,000.00**. The Tenants' claim for recovery of their **\$350.00** outstanding security deposit is also successful, as the Agents' version of events was internally inconsistent and, therefore, unreliable. Finally, the Tenants are awarded recovery of their **\$100.00** filing fee for this Application from the Landlord.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlords in the amount of **\$30,450.00**. This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: February 06, 2020

Residential Tenancy Branch