



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 damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords and tenant R.H. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants served a different tenant of the landlord with their application for dispute resolution in March of 2020. The landlords testified that their tenants provided them with the tenants' application for dispute resolution on March 8, 2020. While the above service does not accord with the service requirements of section 89 of the *Act*, I find that the tenants' application for dispute resolution was sufficiently served on the landlords, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Preliminary Issue- Amendment

The tenants' application for dispute resolution only lists H.K.P.R. as a landlord. Landlord H.K.P.R. testified that his sister is a part owner of the subject rental property and is also a landlord of the subject rental property. Landlord J.R. confirmed landlord H.K.P.R.'s testimony. This testimony was not disputed by tenant R.H.

Based on the above undisputed testimony and pursuant to section 64 of the *Act*, I amend the tenants' application to list J.R. as a landlord.

Preliminary Issue- Evidence

The landlords testified that they left their evidence in the tenants' mailbox on April 2, 2020. Tenant R.H. testified that he did not receive any evidence. No proof of service documents were entered into evidence by the landlords.

Section 3.15 of the Residential Tenancy Rules of Procedure states that the Respondents' evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the landlords' have not proved, on a balance of probabilities, that the tenants were served with the landlords' evidence package. I therefore exclude the landlords' evidence from consideration.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. The landlords purchased the subject rental property from the previous landlord (the seller landlord) and took possession in July of 2019. The subject rental property is a house with a basement suite and an upper suite. The tenants rented the basement suite. The landlords provided the seller landlord with written notice that:

- In accordance with section 49 of the *Residential Tenancy Act*, the Buyers hereby request that the Seller, as landlord, give notice to the tenants of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenants to vacate the Property by 1:00 p.m. on June 30, 2019.

The above notice was entered into evidence by the tenants.

Both parties agree that the seller landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use, effective June 30, 2019 (the "Two Month Notice") and the tenants moved out in accordance with that notice. Page one of two pages of the Two Month Notice was entered into evidence.

Tenant R.H. testified that tenant C.L. drives past the subject rental property every day and based on her observations, does not believe anyone lives in the basement suite. No evidence to support tenant R.H.'s testimony was entered into evidence.

Landlord J.R. testified that she moved into the subject rental property in August of 2019 after she and her family painted the subject rental property and changed the carpets.

Tenant R.H. testified that the landlords have applied to re-zone the subject rental property which shows that the landlords did not intend on using the basement suite at the subject rental property to live in.

Landlord J.R. testified that the landlords have applied to rezone the subject rental property but that this process can take years and is not an indication that she does not live in the basement suite of the subject rental property.

Tenant R.H. testified that the landlords breached section 49 of the *Act* by renting out the upper unit at the subject rental property to tenants other than themselves. Landlord J.R. testified that the upper unit at the subject rental property was vacant when they purchased the subject rental property and that she and her husband elected to move into the basement suite because it was smaller, and she and her husband did not need that much space. Landlord J.R. testified that she was under no obligation to rent the upper suite to the tenants.

The tenants are seeking 12 months rent in the amount of \$9,600.00 pursuant to section 51(2) of the *Act*.

Analysis

Section 51(2) of the *Act* states that 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case, the onus to prove their claim rests with the tenants. Tenant R.H. testified that tenant C.L. drove by the subject rental property daily and that based on her observations, she does not believe anyone lives in the basement suite. This evidence was refuted by landlord J.R. The testimony between the parties is conflicting, I find that the tenants have not proved, on a balance of probabilities, that the landlord does not live at the subject rental property or that she did not move in, in August of 2019.

I find the testimony regarding zoning to be unhelpful as applying to rezone a property does not prove that landlord J.R. did not move into the subject rental property or does not currently reside there.

I note that the landlords were under no obligation to rent the upper suite to the tenants. The upper suite is separate and apart from the basement suite the tenants resided in.

Based on my above findings, I dismiss the tenants' monetary claim.

Conclusion

The tenants' application is dismissed 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 14, 2020

Residential Tenancy Branch