



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 award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both parties were represented by counsel and an advocate respectively.

As both parties were present service was confirmed. The parties each testified that they were served with the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. I find that much of the submissions of both parties to be irrelevant to the matter at hand. The principal aspects of the claim and my findings around each are set out below.

I note that each of the named respondents have provided the same documentary evidence, each providing numerous pieces of individual pages instead of a single pdf file with numbered pages. Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that providing identical documents twice, each as a collection of single page files to be a poor manner of providing and organizing evidence. While I have not excluded any of the documentary evidence of either party, I find that poor presentation detrimentally affects the strength of submissions and parties are advised to submit all evidence once in a single numbered pdf file containing only relevant materials.

The parties agree on the following facts. This periodic tenancy ended on August 31, 2019 in accordance with a 2 Month Notice to End Tenancy dated June 30, 2019 providing that the tenancy will end as all the conditions for sale of the rental unit have been satisfied and the purchaser or a close family member intends to occupy the rental unit. Prior to ending the monthly rent was \$1,100.00 payable on the first of each month. The rental unit is a lower level suite in half of a duplex building. The named respondents are the purchasers of the property.

The tenants submit that since the tenancy ended they have driven by the rental property a number of times and have not observed it being occupied. The tenants say that in addition to driving by at various times of the day they have also come to the rental unit to pick up mail and have not witnessed anyone residing in the rental suite. The tenant submitted some photographs taken of the exterior of the rental suite as evidence that no one appears to be residing there.

The landlord submits that HG, the mother of the named respondent GG, now resides in the rental property with a number of other family members. HG testified that they have been residing in the rental property since October 2019. HG said that there are a number of other family members who are also residing in the rental property and they freely use both the lower level rental unit and the upper level of the property.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to prove their claim on a balance of probabilities lies with the applicant.

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, or the purchaser of a property, 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,

The 2 Month Notice of June 30, 2019 provides that the purchaser of the property, the named respondents, have asked the landlord to issue the notice as they or a close family member, intends to occupy the rental unit.

The tenants submit that they disbelieve that anyone has occupied the rental unit within a reasonable period of time after their tenancy ended. Based on the evidence, I find that the tenants have not met their evidentiary onus. The primary evidence of the tenants is their testimony that they have driven by the rental unit and attended a number of times after the end of the tenancy and have not observed anyone residing in the rental unit. I do not find the observations of the tenant to be sufficient to determine that the rental unit has not been used for the purposes set out in the 2 Month Notice. I find that a few exterior photographs to be insufficient evidence that the rental unit stands empty or not occupied by the landlord's close family member.

While the tenants found what they believed to be inconsistencies in the landlord's documentary materials, I do not find this to be sufficient to establish that the rental unit is not being used for the purposes stated on the 2 Month Notice. The landlord's witness HG gave cogent, consistent testimony regarding their occupancy of the rental property. I accept the evidence of the landlord that the rental unit, in combination with the upper level of the rental property, now is used by the landlord's close family member as their

residence. While the tenants suggest that they have only recently observed a bed in the rental unit, I find these suspicions and observations to be insufficient to determine that the landlords have not used the rental unit for the stated purposes.

I find that the tenants have not met their evidentiary onus on a balance of probabilities and therefore dismiss the application.

Conclusion

The tenants' application is dismissed in its entirety 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: September 4, 2020

Residential Tenancy Branch