



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* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent, the landlords' lawyer, the two tenants (male and female), and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 72 minutes.

The landlords' agent confirmed that he had permission to represent the two landlords, who are his parents (male and female), named in this application. The landlords' agent confirmed that his lawyer had permission to represent him and the two landlords. The two tenants confirmed that their lawyer had permission to represent them.

Two witnesses, "witness JW" and "witness AG," testified on behalf of the landlords. One witness, "witness DG," testified on behalf of the tenants. All three witnesses were excluded from the outset of the hearing and called back in later. Both parties had equal opportunities to question all three witnesses.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the legal first name of the male landlord. Both parties consented to this amendment during the hearing.

The landlords' lawyer confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlords' agent confirmed that he did not serve the landlords' written evidence to the tenants. The tenants' lawyer confirmed that no written evidence was received from the landlords. I notified both parties that I could not consider the landlords' written evidence at this hearing or in my decision because it was not served to the tenants, as required by section 88 of the *Act*.

Both parties verbally confirmed that they were ready to proceed with the hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy ended on August 31, 2018. A written tenancy agreement was signed by the tenants and the former landlord, which began on May 1, 2016. The landlords purchased the rental unit in August 2017 and continued the tenants' tenancy without signing a new tenancy agreement. Monthly rent of \$800.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants and the landlords returned the full deposit to the tenants. The rental unit is a cottage, which is located on the same rural property as a main house.

Both parties agreed that the tenants vacated the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 11, 2018 ("2 Month Notice"). Both parties agreed that the notice had an effective move-out date of August 31, 2018. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *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 seek compensation under section 51(2) of the *Act* for 12 months' rent compensation of \$800.00, totaling \$9,600.00, plus the \$100.00 filing fee. The landlords dispute the tenants' entire application.

The tenants' lawyer stated the following facts. The tenants vacated the rental unit pursuant to the landlords' 2 Month Notice for the landlords or their close family member to occupy the rental unit, which was not done within a reasonable period of time. The landlords did not move in to the rental unit by October 17, 2018. The tenants do not know if the landlords moved in at all. The landlords were already living at the main house at the rental property, and they are family, so it should not have taken long for them to move into the rental unit after the tenants vacated. The landlords were travelling out of the country while the tenants were living at the rental unit. The tenants suspected that they would have to file this application when they received the 2 Month Notice from the landlords because the landlords raised the rent in other units at the same rental property and other tenants were evicted as well. Witness DG has the rental unit as part of his garbage route for work and went by the rental unit.

Witness DG testified regarding the following facts. He has been friends with the male tenant for 18 years. He visited the male tenant while he was living at the rental unit. He went to the rental unit on October 17, 2018 to see the male tenant, but no one answered the door when he knocked. The blinds were open, there was no furniture in the house, and it was empty. He took photographs of the rental unit at the windows and then left. He did not know the tenants had vacated the rental unit at that time. He went back to the rental unit in March or April 2019 and knocked on the door, but no one answered. He saw a boat in the yard, so he thought that someone was living there. He went back to the rental unit again in June 2019, knocked and no one answered, and he did not look through the windows. In summer 2019, the male tenant told him that he had moved out of the rental unit. Witness DG went back twice after October 2018, in order to find the tenant. He did not have any other contact information for the tenant, as witness DG obtained a new phone number.

The landlords' lawyer stated the following facts. The landlords both occupied the rental unit from September 2018 to 2019, after the tenants moved out. The landlords did not re-rent the rental unit to other tenants or do Airbnb there during the above time period.

Witness AG was living at the rental property the entire time. Witness JW is a friend of the landlords who can confirm that the landlords were living at the rental unit.

Witness JW testified regarding the following facts. She has known the landlords for years and she helped them both move from the main house to the rental unit in September 2018. They had already moved their bed, furniture and large items in early September 2018, and she helped them move small items prior to September 12, 2018, before witness AG signed her lease with the landlords to move into the main house basement unit. The landlords moved into the rental unit because their son, the landlords' agent, came back and lived on one side of the basement of the main house, with witness AG on the other side of the basement, and the landlords were upstairs, where there were also Airbnb guests, so the house was too busy and small for the landlords. No one else lived at the rental unit except the two landlords from September 2018 to 2019. Witness JW visited the landlords every weekend at the rental unit to have tea, as she lives a half hour walking distance from the rental property. The landlords lived at the rental unit for over one year, until witness AG moved into the rental unit in October 2019, complaining of noise at the main house basement unit, from Airbnb renters. Witness AG could only move in after her one-year lease with the landlords expired at the end of September 2020. At that time, the landlords moved into the basement unit at the main house, switching places with witness AG. Witness JW does not know witness DG.

Witness AG testified regarding the following facts. She viewed the basement suite at the main house on September 4, 2018, after seeing an online advertisement. She went to sign the written tenancy agreement on the counter at the rental unit, where the landlords were residing, on September 12, 2020. At that time, she noticed an area rug, a couch, a meditation altar, a large dining room table, and dishes in the sink, as she met the landlords after they had lunch. The landlords are minimalists and do not have a lot of furniture inside the rental unit. She remembers these things from two years ago, because she is a visual person and she visited the landlords more than once. She lived in the basement from October 1, 2018 until the end of September 2019 with her daughter, who is now 17 years old. Witness AG would look for the landlords at the rental unit, when she could not find them in the garden, during her tenancy in the main house basement. She went to the rental unit approximately six times, to talk to the landlords and bring them papers. The landlords' son visited the landlords at the rental unit. The basement had two bedrooms. She moved into the rental unit, at the same rent she was paying in the basement main house, on October 1, 2019 until present, as she still lives there with her daughter. The rental unit has one bedroom, and she has a murphy bed, which folds up, in the main part of the cottage. She switched places with

the landlords, who moved into the basement at the main house, because of the noise at the main house from the Airbnb renters. She does not know witness DG. She did not receive any incentive from the landlords to testify on their behalf at this hearing.

Analysis

I find that I have jurisdiction to determine this application, as the tenants filed their application on August 18, 2020, which is within two years after the end of the tenancy on August 31, 2018, as per section 60 of the *Act*.

Section 49(3) of the *Act* states that landlords may end a tenancy in respect of a rental unit where the landlords or a close family member intend in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (2) 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.

I make the following findings, on a balance of probabilities, based on the testimony and evidence of both parties. The tenants vacated the rental unit on August 31, 2018, pursuant to the 2 Month Notice. I accept the submissions of the landlords' lawyer and the affirmed testimony of witness JW and witness AG that both landlords moved into the rental unit from September 2018 to September 2019, a period of one year, which meets the minimum six months requirement under the *Act*. Both witness AG and witness JW provided affirmed testimony that they saw the landlords, their furniture and their belongings and they visited the landlords at the rental unit, multiple times from September 2018 to September 2019. Witness JW stated that she went to the rental unit every weekend to visit the landlords and have tea with them.

I find that the tenants did not provide sufficient witness or documentary evidence that the landlords did not live at the rental unit, that there were other people living there, or the unit was unoccupied. I do not find the testimony of witness DG to prove that no one was living at the rental unit because he peered through the windows three times, he could not see any furniture, and he knocked on the door and no one answered. Witness AG confirmed that the landlords were minimalists and did not have a lot of furniture and belongings inside the rental unit. Witness AG provided specific details of the landlord's furniture inside the rental unit because she visited the landlords inside the rental unit multiple times.

I find that the tenants provided insufficient evidence to show that the landlords did not move into the rental unit within a reasonable period of August 31, 2018. The tenants agreed that they did not know whether the landlords moved in or not. As noted above, I accepted the landlords' evidence that they moved into the rental unit in September 2018, and were already living there on September 12, 2018, when witness AG signed her tenancy agreement with the landlords inside the rental unit. I find that 12 days is a reasonable period of time. Witness JW also confirmed that she helped the landlords move in to the rental unit prior to September 12, 2018.

Therefore, I find that the landlords used the rental unit for the reason indicated in the 2 Month Notice. I find that both landlords moved into the rental unit within a reasonable period after August 31, 2018 and occupied it for more than six months. I dismiss the tenants' application for 12 month's rent compensation of \$9,600.00, without leave to reapply.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' entire 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: October 09, 2020

Residential Tenancy Branch