Dispute Resolution Services

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) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $26,375.44 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The hearing began on February 8, 2021. The tenants, the landlord and counsel for the landlord, NL (counsel) attended the teleconference hearing. The parties gave affirmed testimony, counsel provided submissions and all participants were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. The parties confirmed the receipt of all evidence. Therefore, I find the parties were sufficiently served under the Act.

After 60 minutes, the hearing was adjourned to allow additional time for the parties to present their evidence and to be heard. On May 4, 2021, the hearing continued and after an additional 46 minutes, the hearing concluded. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed during the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the

purpose of an investigation under the Act. The parties and counsel did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy ended by way of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 29, 2020 (2 Month Notice). The tenants accepted the and did not dispute the 2 Month Notice. The tenants vacated the rental unit on April 18, 2020, even though the effective vacancy date was listed as May 31, 2020. The 2 Month Notice

> 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).

On the 2 Month Notice it reads "Please indicate which close family member will occupy the unit" and the landlord checked "The child of the landlord or landlord's spouse."

The tenants are seeking $26,335.44, which is the equivalent of 12 times the monthly rent of $2,189.62 per month, plus the $100.00 filing fee as the tenants are alleging that the landlord failed to use the rental property for the stated purpose for a minimum of 6 months as required by the Act.

Tenant's Evidence

The tenants testified that they took their photo evidence because the home is on a main road that they drive often so they would go by the home on a regular basis. The tenants stated that there would be odd jobs being done like painting steps but no vehicles at night until June 2020 when there were different vehicles between June and August. The tenants claim that one of the vehicles had no front plate so it must be from Alberta however the photo evidence provided by the tenants was very grainy and hard to see.

The tenants presented photos of what they describe as a Ford Explorer with an Ontario plate, which was unclear and another photo of what the tenants described was an Ontario plate, which was also unclear.

The tenants also claim that they spoke to an old neighbour of theirs who thought the home was being used for an Air BNB. The tenants confirmed that they did not get an Affidavit from their old neighbour. The tenants then referred to a photo of what was described as a gold Intrepid vehicle and stated that the Intrepid was there on October 23, 2020 and October 24, 2020.

The tenants also described an Affidavit of RP submitted by the landlord and wanted to know where the receipts were for this handyman. The tenants also referred to a photo that was taken at night with no date stamp.

The tenants also asked the landlord where their proof of address was for RP. Shortly after the tenants asked the landlord where the receipts were for support the landlord's Affidavit of BC and again alleged the home was being used as an Air BNB. The tenants then questioned where all the vehicles were during quarantine. The tenants then stated that there is no proof from the landlord of bills paid to support that the home was being used as their primary residence. The tenants referred to a photo from the landlord and asked why people were living on the floor, which the landlord addressed and will be described later in this decision. In another exhibit of the landlord, the tenants stated that there was no furniture and that someone is shown sitting on the washer and dryer, which is not furniture. The tenants then stated only a table and chairs are shown in a different photo from the landlord. The tenants stated that the pictures show that the home was a "spring break house".

Regarding the Affidavit of MJ, they said if the tenancy agreement was signed, the affidavit doesn't say that they moved into the home. The tenants allege that it is weird and convenient that MJ lives back in Toronto now.

The tenants also say that there was no mail from MJ or proof and forwarding mail. And that the timing is questionable in terms of six months. The tenants then said the landlord is described as a real estate investor on their LinkedIn account.

The tenants claim the landlord has the onus of proof several times during the hearing, which I will address later below. The tenants also stated that the landlord did not act in good faith, which I will also address later below.

Landlord's Evidence

Counsel submitted that photos of 7 vehicles over the period of 6 months is not a lot of visitors and does not support the allegation of an AirBNB. Counsel also submits that the photo of 2 doorbell photos were not taken driving by and that is a creepy breach of privacy to have been taken close up while trespassing and that the family was concerned about people coming onto the property without permission. Counsel also submits that renovations to the home are not incriminating and that the tenants' claim is highly speculative and that even if the landlord provided no evidence, the tenants have failed to reach their burden of proof in proving their claim.

Counsel stated that several sworn Affidavits outweighs "suspicion" from a neighbour and that the landlord's son lived there with two of their siblings. In terms of the SUV, counsel explained that the SUV belonged to P, the father of the children. Counsel also stated that the work done by RP was not paid work, which meant no invoices as RP was a family friend and not a contractor by trade. Counsel described RP as a friend of the landlord. Counsel described BC attended the property to assist with some handy work that the landlord needed assistance with.

Counsel presented the Affidavit of MJ, which confirms they were at the home for the time period in question until September 8 and that P was also there with his daughter. The Affidavit of RP was also reviewed, which confirms that they do errands. Counsel explained that receipts were not submitted as they were family friends and did not keep receipts as a result. Counsel submits that the tenants have the burden of proof and that the claim is not the landlords to prove. Counsel also stated that if the tenants thought the property was being used for an AirBNB, it would have been incredibly easy to get screenshots from the AirBNB website and the tenants have presented no evidence of that because the property was not being used for an AirBNB as claimed.

Counsel submits that the tenants would also need to prove that the home was re-rented, which they have failed to do. The Affidavit of BC was reviewed, which confirms that there was nobody else living in the home. The Affidavit of the landlord was also reviewed which indicates that the landlord entered into a tenancy agreement with MJ and MCJ as of April 18, 2020 and was a fixed-term that was scheduled to revert to a month to month agreement as of April 15, 2021.

The landlord explains in their Affidavit that the home is located on a very busy street and present a photo to support that street parking is not allowed and neither is parkin in front of the home. The landlord states that it is for that reason that every person that is

visiting, doing repairs or doing any kind of work and who arrives by car must park their car in the driveway. The landlord also states that the fact that cars are parked in the driveway does not imply that people who owned the parked cars live in the home and that the cars shows in the photos submitted by the tenants belong to the family of the landlord, workers or family members doing some kind of job in the home.

Regarding the two doorbells, the landlord explains that the original doorbell stopped working during the tenancy that the tenants were aware of, and that a second wireless doorbell was installed as a workaround.

Counsel submitted that there was no evidence of any AirBNB being operated at the home as claimed and that the claim should fail as a result. Counsel referred to a UHaul receipt which supports that there was furniture moved out of the home on November 3, 2020.

Counsel submits that the tenants attempt to describe the landlord as a real estate investor who has a higher standard of proof is incorrect and that the only parties to have the burden of proof is the tenants in this matter, not the landlord.

Counsel summarized the tenants' claim as pure fabrication and speculation and that it has not come close to meeting the burden of proof under the Act. Counsel stated that if the tenants were trying to be private investigators, they did a very poor job. Counsel reminded the tenants that the landlord has many sworn Affidavits that outweigh speculation and conjecture.

Surrebutter by Tenants

The tenants again claimed the burden of proof is on the landlords, which will be address below. The tenants claim the UHaul receipts do not show any comments about furniture and alleged the landlord and their family were willing to break COVID rules.

The parties were reminded that the character of either party was not relevant and would not be part of my decision as my decision would be based on evidence and not the characters of the parties.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application 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. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

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.

I will first address the tenants' claim that the landlord has the onus of proof. I find the tenants are incorrect as this matter relates to a tenants' application for compensation under the Act and that there is no reverse onus on the landlord under the Act for this matter. As a result, I disagree with the tenants and find that the tenants have the burden of proof to prove their claim on the balance of probabilities.

In addition, the tenants also stated that the landlord did not act in good faith, which I find is not relevant as the tenants failed to dispute the 2 Month Notice and that good faith only becomes an issue when a 2 Month Notice is disputed. As a result, I also disagree with tenants' assertion that good faith is an issue and that the only issue is whether the tenants have provided sufficient evidence to support that the landlord failed to use the rental unit for the stated purpose on the 2 Month Notice.

Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

> **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
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> (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.**
>
> [emphasis added]

I have carefully considered the evidence before me and will address the tenants' blurry photos first. I afford no weight to the blurry photos and find that they do not support what the tenants have claimed it shows. I also agree with the landlord and counsel that 7 vehicles over 6 months does not support an AirBNB as claimed. I also agree with counsel that if an AirBNB was being operated, a screenshot of the home being advertised on the AirBNB website would have been easy to obtain and was not submitted in evidence.

As stated above, the tenants have the burden of proof and I find the tenants have failed to meet that burden as I agree with counsel that the signed Affidavits submitted by the landlord hold more weight than conjecture from an "old neighbour" alleged by the tenants when the "old neighbour" was not called as witness and that no Affidavit was submitted by the tenants from the "old neighbour".

I find the explanation by the landlords for the two doorbells has the ring of truth to it, especially given the fact that the tenants did not dispute that the doorbell stopped working during their tenancy. I also find that the UHaul receipt does support that furniture would have been removed as I find that it is more likely than not that a UHaul would not be required if there were no furniture. While the parties disagreed regarding what the photo evidence shows in terms of sleeping arrangements and furniture, I find there is no requirement under the Act for the home to be fully furnished and that the photo evidence I find supports that the home was being occupied as stated by the landlord during the hearing.

In summary, I find the tenants have failed to meet the burden of proof and as a result, **I dismiss** the entire application without leave to reapply as it has no merit. I find the tenants have provided insufficient evidence to support that the landlord failed to comply with section 51(2)(a) or 51(2)(b) of the Act as the evidence before me from the landlord supports that a tenancy agreement was signed and that the home was used for at least six months from the date of April 18, 2020 when the tenancy ended. As a result, I dismiss the application of the tenants due to insufficient evidence, without leave to reapply.

As the tenants' application had no merit, I do not grant the filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply, due to insufficient evidence.

As the tenants' application was not successful, the filing fee is not granted.

This decision will be emailed to both parties.

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: May 14, 2021

Residential Tenancy Branch