



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 an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary compensation for loss or other money owed and to recover the cost of the filing fee

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing, I question whether BP was a tenant as the tenancy agreement is not signed by BP and indicates BP is a minor. The tenant explained that BP was their 12 year old child. As BP is a minor child and did not agree to be a tenant, I find it appropriate to remove BP from the style of cause as they should not have been named.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for loss or other money owed?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on July 30, 2021, and was to expire on July 31, 2023. Rent in the amount of \$2,700.00 was payable on the first day of each month.

The addendum to the tenancy agreement which is the subject of dispute before me reads as follows:

- 1. Lease does not include self contained suite in the basement until December 1st, 2021.**
- 2. Once the current tenant, Marc Pusch, vacates the suite the new tenants, Margarita Diaz and Brayden Diaz-Paquette, will assume possession of the suite for personal use and the rental will then include the entire house.**
- 3. As of June 30th, 2021, the current basement suite tenant, Marc Pusch, is expected to vacate the property by November 30th, 2021.**
- 4. If this in fact occurs then the monthly rent for the entire house will increase to \$3500 per month beginning January 1, 2022.**
- 5. No sublease.**

The advocate for the tenant stated that the addendum to the lease did not contain the basement unit until December 1, 2021. The advocate stated that it was understood by the tenant that the occupant in the basement unit was expected to be gone by November 30, 2021.

The tenant testified that they had family coming in for the funeral for their mother, then guest coming in for Christmas and guest coming in January 2022 to celebrate their milestone birthday.

The tenant testified that as a result of the basement unit not being available, they had to pay for their guest to stay elsewhere. The tenant stated December 3 to December 12, 2021, the cost was \$1,125.00 and December 17, 2021, to December 31, 2021, the cost was \$1,625.00 and the final expense January 22 to 28 2022 the cost was \$750.00. The tenant seeks to recover the cost of \$3,500.00.

The landlord testified that the addendum clearly states that the tenant would only take the suite once the occupant in the lower suite vacated. The landlord stated that it was not guaranteed, and this was clear before they signed the tenancy agreement. The landlord stated that the lower occupant was expected to be gone by November 30, 2021; however, the construction was delayed for the occupant's new accommodation, and they exercised their right to have the tenancy continue on a month-to-month, which the occupant did vacate on December 31, 2021.

The landlord testified that the rental unit was available for the tenant for January 2022 and the suite was offered to the tenant at half the rent. However, the tenant refused to take it.

The landlord testified that the tenant has provided no proof that they paid any money for their guest to stay elsewhere, such as showing money being transferred. The landlord stated there are no receipts and the tenant is simply stating they paid in cash, this is not proof.

The tenant responded that they did not take the suite for January 2022 because they needed 30 days' notice because they had items in storage.

File in evidence are the following conversations by emails. I notes the times are not necessary matching to each other's correspondent as the landlord was out of country and a different time zone.

June 4, 2021

Landlord – there is a tenant currently living in the basement suite

Tenant – Can you look at your papers please? ... Will the tenant still be living here or will the whole house be available.

Landlord – His lease ends at December. His apartment is under construction. Once it's finished he will move out I think.

Tenant- FYI, we signed for a place yesterday butwe would rather be in a house again. We would be fine with that. It sounds like it's just temporary.

October 27, 2021

Landlord - ... is going to exercising his right on a month to month tenancy starting December. He is not moving until the apartment is ready.

November 3, 2021

Tenant – Something to consider, Would you like to keep the suite and rent it out? I know you can make a lot more if you rent it out separately and it makes no difference to me if I rent the whole house now or not. I can make do either way... Please let me know what you would like to do.

November 15, 2021

Landlord - I'd prefer you take the suite after ... moves out as per our agreement.

Tenant – that's no problem. I have so much furniture and stuff ... (I note the tenant did provide the above response of the landlord, but did not provide the full email thread showing their response, only the landlord provided this)

November 15, 2021

Tenant – My in-laws are arriving from Ontario on December 2 and are expecting to stay in my guest suite. Again, my lease stipulates that the suit will be in my possession for December 1, 2021 so please let me know how this will be arranged.

Landlord – when we signed the agreement, we discussed the possibility of ... new building being delayed, so I offered to lower the rent ...

Tenant – No – it was agreed that he would be gone by December 1st....

December 15, 2021

Landlord - ... is moving and you are going to take the suite starting January 2022.

Tenant - ... Please note that you need to give 30 days notice starting on the first of the month. My in-laws and other relative have had to read (rent) places since they cannot stay with me and use the suites as was expected. They have already paid for their accommodations ...

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed on the first of each month.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, both parties have a different interpretation of the addendum to the tenancy agreement. The tenant's position is that clause one gives them the basement unit on December 1, 2022. The landlord's position is that you have to read the addendum as a whole document and the circumstances around that agreement when made as the tenant was only to take possession once the occupant vacated and that the December date was the projected date, and the tenant was aware of possible delays.

On June 4, 2021, before the agreement was made, the landlord informed the tenant the basement unit was occupied, and that the occupant fixed term lease ends December. The landlord informed the tenant that the occupant's apartment is under construction and once it is finished that they will move out "I think." The tenant response that they would be "fine with that. It sounds temporary." Clearly by both parties' words, the landlord "I think" and the tenants "it sounds temporary" were both speculating as to what the occupant was going to do.

On October 27, 2021, the landlord informed the tenant that the occupant was going to exercise their rights on a month-to-month as the occupant was not moving until their apartment was ready as there was a delay. The tenant responded on November 3, 2021, asking the landlord if they would like to keep the suite or rent it out. I find this is an unreasonable statement for the tenant to make if they truly had the intent of using the basement suite for December 1, 2022, for their guest.

On November 15, 2021, the landlord responded that they would like the tenant to take the suite after the occupant moves out as per their agreement. The tenant responded that is no problem. While I do not know what changed on November 15, 2021, that the tenant's position changed and were demanding they get the basement suite on December 1, 2021, as they indicated they had guest and was now solely relying upon clause one of the addendum. However, this is inconsistent with the prior conversations.

Further, on December 15, 2021, the landlord informed the tenant that the basement unit would be available for January 1, 2022. The tenant refused to accept the unit because the landlord did not give them 30 days' notice. I find this statement is unreasonable if the expectation were to take possession on December 1, 2021, regardless of if items were in storage, as they had planned guest coming in later January 2022. The Act does not require any parties to give 30 days notice to take possession of a rental unit, only to end a tenancy.

Further, whether the occupant left on December 31, 2021, or the first week of January 2022 is not relevant as the tenant had already refuse to take possession and the landlord was entitled to give the occupant more time.

I am satisfied based on the totality of the conversation above and considering the entire addendum that the tenant was only entitled to the basement suite once the occupant had vacated. Therefore, I find the tenant has failed to prove a breach of the Act by the landlord.

Further, even if I had found the landlord breach the Act, which I have not, the tenant's claim would still fail because the tenant provided no proof of payment only an email exchange. No receipts were provided, just simply stating cash was given is not proof, no affidavits or statements were provided that their guest expected the tenant to pay for their accommodation. This is also inconsistent where the tenant indicates to the landlord on December 15, 2021, that the accommodations were already paid for by their guest.

In light of the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's 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 11, 2022

Residential Tenancy Branch