



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the Tenant's claims for monetary compensation from the Landlord under the Act, a request for other relief, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

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

Preliminary Issues

Both the Landlord and the Tenant submitted evidence late for the hearing. Furthermore, the day after the conclusion of the hearing the Tenant submitted more documentary evidence, without an order allowing this.

All of these late evidence submissions were contrary to the rules of procedure, which required evidence to be submitted no later than five days before the hearing. I note that both the parties were provided with the information regarding submitting evidence for the hearing prior to the hearing, in the hearing information packages. Furthermore, a party may not provide further evidence after a hearing has concluded without an order allowing this.

Therefore, I find that none of the late described evidence is admissible and I have not considered it.

Issue(s) to be Decided

Has the Landlord breached section 51 of the Act?

Is the Tenant entitled to any other compensation?

Background and Evidence

The Tenant submitted in writing that this tenancy began in approximately 2008. In evidence the Tenant provided portions of a written tenancy agreement which sets out that the tenancy began on January 1, 2010. In the written agreement rent is set at \$1,470.00, payable on the first day of the month. I note that pages are missing from this document.

It appears that around the summer of 2011, the Landlord began speaking with the Tenant about having the tenancy end so the Landlord's daughter could move into the rental unit.

In late February of 2012, the Landlord confirmed these plans with the Tenant via email. The Landlord also explained in this email that she would be living in the rental unit when she was in the area.

On February 28, 2012, the Landlord issued the Tenant a two month Notice to End Tenancy for the Landlord's use of the rental unit, indicating the Landlord or a close family member would be occupying the rental unit, with an effective end date of June 1, 2012 (the "Notice"). The Tenant was compensated by receiving the equivalent of one month of rent, in accordance with the Act.

The Tenant testified she vacated the property on May 31, 2012.

The Tenant is alleging that neither the Landlord nor her daughter moved into the rental unit. The Tenant is claiming for the additional compensation found in section 51 of the Act. The Tenant testified that as of March 2014 the Landlord is not living in the rental unit.

The Tenant alleges the Landlord lives at a different address and is not living at the rental unit full time right now. She alleges the Landlord's principle residence is in another town.

The Tenant writes in her submissions that she is basing her allegations on seeing rental ads for the property and speaking with past renters. The Tenant explains the rental unit is located in a small town and everyone knows the Landlord and her rental properties at this address.

In evidence the Tenant has provided a barely legible photocopy of an ad, allegedly posted by the Landlord. The handwritten ad lists one rental unit for rent at \$625.00 per month starting, "... Feb. 1st". There is no year in the date. The ad also seeks a housemate for a, "top level suite", and explains the accommodation will be shared with the owner, who lives, "... in Nelson 2/3 of the time." The rental unit amenities are listed and states the unit is available "Feb 1st". Again, no year is listed.

The Tenant has also submitted a letter from a third party, "A.R.", dated February 28, 2013. A.R. writes in the letter that she had an arrangement with the Tenants to share the rental unit, and was paying the Tenants \$600.00 a month in rent. A.R. writes that she became aware the Landlord gave the Tenants the Notice and the Tenants vacated around June 1st.

A.R. writes that the Landlord agreed she could stay in the rental unit until the end of June in order for A.R.'s daughter to finish off the school year. According to the letter the Landlord allowed A.R. to stay in the lower portion of the rental unit and the Landlord was going to perform some renovations at the rental unit and would, "... write up an agreement with me come September after she finished the renovations over the summer."

A.R. states "This was definitely not her residence during this time between June and January." A.R. also alleges the Landlord started advertising for the rental unit in September for one woman to share with her. A.R. also writes, "I had even showed it to prospective renters." The letter further sets out, "[Landlord] bought furniture from the local thrift store and came by once every two months for maybe five days at a time to do these few repairs."

The Tenant further testified that she had gone to the rental unit property after the tenancy had ended and stated that at times it looked like no one was living there. The Tenant testified that eight months after the tenancy had ended the Landlord was trying to rent the rental unit out again. The Tenant testified that A.R. has informed her that she showed the rental unit to prospective renters at the request of the Landlord. The Tenant was not sure when the alleged showing occurred.

The Tenant also claims for a dryer she left behind at the rental unit. The Tenant testified that the dryer broke down and the Landlord refused to repair it. In evidence the Tenant submitted a copy of an email from the Landlord, and the Tenant argues this is evidence the Landlord refused to repair the dryer. In the email the Landlord explains she should have removed the washer and dryer with her belongings as she did not intend to supply these on a permanent basis. She informs the Tenant that she could replace the dryer and then take it with her when she moves out. The tenancy agreement indicates that the Tenant has free laundry. It appears that someone has written beside the checkbox in this portion of the tenancy agreement "W/D", although this is not initialled or explained.

The Tenant testified that she paid approximately \$70.00 for a dryer second hand, but has no receipt as it was bought from someone who advertised it for sale in a local newspaper. The Tenant stated she left the dryer behind for A.R. to use.

In reply, the Landlord testified that her daughter had planned to move into the rental unit. There was some change in plans and the daughter and her family moved to a different city.

The Landlord testified that she initially thought she would just visit and stay with her daughter in the rental unit, but when those plans fell through, she decided she would move into the main floor of the house. She testified she moved into the rental unit so she could begin doing some renovations around the house.

The Landlord testified that whenever she was on site at the rental unit she stayed at the rental unit. The Landlord testified she lived in the rental unit from June to November of 2012, 100% of the time. She testified her spouse was also working on the property doing renovations and would stay there as well.

The Landlord testified she did not know that the Tenant had A.R. living with her until approximately May of 2012. The Landlord testified she had not given prior consent to the Tenant to sublet. The Landlord testified that the Tenant informed her that A.R. would like to stay in the lower unit until the end of June 2012, for her daughter to finish school.

The Landlord testified that A.R. did not pay rent, although she had paid for hydro, and she had no tenancy agreement with her. The Landlord testified she had warned A.R. that there would be a lot of noise due to the work on the house. She explained that A.R. lived there until around February of 2013.

The Landlord testified that about 10 months after the tenancy ended she had a friend stay in the rental unit for about four weeks, as she wanted someone to stay in the house when no one was there.

In final submissions the Tenant stated she believed the Landlord had attempted to rent out the property and this was contrary to the Act. She testified that A.R. had been paying the Landlord rent and that she had asked the Landlord for A.R. to stay on for two weeks, not several months. The Tenant submits that the Landlord was supposed to occupy the entire house.

In final submissions the Landlord denied that she has ever rented out the main floor of the rental unit since the tenancy with this Tenant ended. She further denied that she ever asked A.R. to show the property to prospective renters.

Analysis

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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant 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 Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant's Application must be dismissed without leave to reapply.

The Tenant applied pursuant to section 51 of the Act to request the equivalent of two months of rent in compensation as she alleged the Landlord is in breach of section 51(2) of the Act. That section states,

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[Emphasis added.]

I find the Tenant had insufficient evidence to prove the Landlord did not move into the rental unit within a reasonable period after the effective date, which was one of the stated purposes of the Landlord; or, that the Landlord did not use the rental unit for at least six months for this purpose after the effective date of the Notice.

The Tenant had alleged the Landlord was advertising the rental unit in February, although by implication, that would have had to be February of 2013, and in any event that would be beyond the six month period contemplated in section 51(2). Once the Landlord has moved into the rental unit, she was able to come and go as she pleased. Furthermore, it is not relevant what is happening now in the rental unit as the focus of the Act is on the six month period following the effective end date of the tenancy.

Perhaps most importantly, the Tenant had insufficient evidence to prove the Landlord had, in bad faith, re-rented the Tenant's rental unit to a new renter within six months after the Tenant had vacated the rental unit or had used it for another purpose not set out in the notice to end tenancy.

I also find that the Tenant had insufficient evidence to prove the value of the dryer that she left at the rental unit. She failed to provide sufficient evidence that she suffered a loss due to the alleged dryer problems. It also appeared from the evidence before me that the Tenant left this dryer for A.R. to use, although it was clear to the Tenant that she could remove the dryer when she left, as she had purchased it herself.

Conclusion

I find the Tenant's Application must be dismissed, as she had insufficient evidence to prove the Landlord had breached section 51 of the Act, and had insufficient evidence of a loss suffered due to the alleged problems with the dryer.

I dismiss the Tenant's Application without leave to reapply.

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 Act.

Dated: July 16, 2014

Residential Tenancy Branch

