



Dispute Resolution Services

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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* (the Act) for a monetary order in the amount of \$14,616.00 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 tenants, the agent/spouse for the landlord DZ (agent/spouse), an interpreter for the landlord SJ (interpreter) and landlord witness/mother of the agent/spouse DZ, BLH (BLH) who is the mother-in-law of the landlord, attended the teleconference hearing. The parties gave affirmed testimony, 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. If a monetary order is granted, that order will be emailed to the appropriate party for service on the other party.

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

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2016 and reverted to a month to month tenancy after March 31, 2017. The tenancy ended by way of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 13, 2018 (2 Month Notice). The landlord was granted an order of possession based on the 2 Month Notice and on the 2 Month Notice the landlord lists the reason for issuing the 2 Month Notice as:

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 are seeking \$14,616.00, which is the equivalent of 12 times the monthly rent of \$1,218.00 per month 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.

The agent/spouse testified that his mother, BLH moved into the rental unit around March 15, 2019. The agent/spouse stated that BLH returned to China to visit her ill mother who was 91 years old as of June 4, 2019 and returned to the rental unit from China on October 1, 2019. A copy of the plane ticket for BLH from China to Vancouver was submitted in evidence.

The tenants testified that they do not feel that BLH moved into the rental unit as there is no record of a move-in fee for BLH and that the elevators were not booked to move BLH into the rental unit. The agent/spouse testified that they were spoken to by the concierge, Walter (concierge) about moving the personal items of BLH into the rental unit without booking the elevators, and the landlord referred to an email dated September 6, 2019 in support of their conversation with the concierge. The agent/spouse also stated that they did so as BLH did not have a lot of personal items as she lives a modest lifestyle. The agent/spouse also stated that a Form K is not required by the strata for a family member and the tenants stated they were not disputed the Form K. The agent/spouse stated that the concierge advised them that they could not be a witness as they were not permitted to do so by the company who employs the concierge.

The landlord called BLH as a witness who confirmed that they left for China on June 4, 2019 and returned to the rental unit on October 1, 2019. BLH stated that she went to

visit her mother in China as her mother was sick. BLH confirmed that she plans to continue to reside in the rental unit.

Upon cross-examination, the tenants asked BLH when the return ticket was booked from China to Vancouver. BLH stated that her son made the reservation and her son confirmed it was made on September 10, 2019. The tenants also asked BLH how long they intend to reside in the rental unit, to which BLH stated that there is no plan to vacate the rental unit.

The tenants stated that they found September 10, 2019 to be “convenient” as the landlord picked up their dispute resolution package on September 4, 2019. The tenants alleged that the return trip to Vancouver from China was booked in response to the tenants’ claim against the landlord. The landlord was in China at the time of the hearing.

The interpreter stated that BLH enjoys the environment in Vancouver and that while she may leave from time to time to visit her mother who is now 92 in China, she has no plans to vacate the rental unit. The interpreter confirmed that BLH did not vacate the rental unit when they travelled to China, and only packed enough for the trip there to visit their mother.

The tenants referred to a blurry photo which was taken outside of a door and shows through to the other side of underneath the door, which the parties were advised I would afford no weight as it was too blurry to be useful. The tenants presented the photo as evidence that the rental unit was empty during the time BLH was in China, which I will address later in this decision. The tenants also testified that they believe the reason they were evicted was to increase the rent; however, the tenants admitted that they had no evidence to support that argument.

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.

Firstly, 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

(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]

Secondly, I have carefully considered the evidence before me and will address the tenant's blurry photo first. I afford no weight to the blurry photo and find that it does not support what the tenants have claimed it shows. I find it does not show an empty rental unit as claimed by the tenants and is too blurry to afford any weight.

I also find that the tenants admitted that they had no evidence to support their suspicion that the landlord evicted them to increase the rent. I find that a suspicion is not sufficient evidence to support their claim and therefore afford the tenants' suspicion no weight.

I will now address the tenants' argument that BLH did not reside in the rental unit for at least six months by leaving for China in June 2019. Firstly, I find this argument fails as to restrict travel of BLH to visit their sick mother would be unreasonable and that the tenants have provided insufficient evidence that the tenant vacated the rental unit. In other words, a 2 Month Notice does not preclude a close family member to travel outside of Canada and to assume such would be unreasonable under the Act. Therefore, I find the tenants have provided insufficient evidence to support that the landlord failed to use the rental unit for the stated purpose for a minimum of 6 months. In fact, I find that the landlord complied with sections 51(2)(a) and 51(2)(b) of the Act by moving BLH into the rental unit, which is supported by the concierge email and testimony of BLH directly.

Based on the evidence before me, I find that the landlord did take reasonable steps to accomplish the stated purpose for ending the tenancy pursuant to the 2 Month Notice and that BLH continues to reside in the rental unit. I afford no weight to the tenants' timeline argument alleging that BLH returned to Canada only after their application was received, as I find that is mere speculation. I also find that there is insufficient evidence before me to support that BLH has vacated the rental unit. Therefore, 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 a result, I dismiss the application of the tenants due to insufficient evidence, without leave to reapply.

As the tenants' application was not successful, 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: December 24, 2019

Residential Tenancy Branch