



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 29, 2021, by conference call. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for damage or loss under the Act.

Both Landlords and the Tenant attended the hearing and provided affirmed testimony. The Tenant also brought a witness with her. The parties confirmed they understood Rule 6.11.

The Landlord confirmed receipt of the Tenant's Notice of Hearing and evidence package on May 19, 2021. The Tenant stated she included a USB stick in the package, along with printed documentation. The Tenant sent a second registered mail package to the Landlords with a letter, confirming that they were able to gain access to the files on the USB stick. The Tenant stated that the Landlords started blocking her emails so she was unable to confirm access to her USB files via email, which is why she sent the second written letter, confirming access. The Landlords confirmed getting both the first package around March 19, 2021, as well as the second letter around May 21, 2021, confirming access to the files on the USB stick. The Landlords stated that although they had concerns there was malware on the USB stick, they were able to open all files on the drive.

I find the Tenant sufficiently served the Landlords with her application and evidence for the purposes of this proceeding.

The Landlords stated they sent 3 packages to the Tenant. The Landlords provided tracking information to show they sent the first package, on October 19, 2021. Tracking information shows this package was not picked up by the Tenant until October 23, 2021. I also note the Landlords sent the Tenant two more smaller packages by leaving them at the post office on October 22, 2021, and October 25, 2021, respectively. The Tenant acknowledged getting the first package but stated that it was served late, and did not leave her with enough time to review it. The Tenant denied getting either of the second or third packages sent, which were sent in the days leading up to the hearing.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the respondent's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the applicant not less than 7 days before the hearing. The Landlords failed to serve their evidence within this window, as it was not received by the Tenant until 6 days before the hearing. I find this jeopardized the Tenant's ability to respond to the evidence, and I find all of the Landlords' evidence is not admissible and will not be considered. The Landlords provided no reasons as to why it took so long to serve their evidence, and did not state that any of their evidence is new and relevant, such that they would have been unable to serve these documents long before they did.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

After reviewing the particulars of this application, I note this rental unit is located in a multi-unit complex consisting of 6 separate rental units. The Tenant rented one of those units under a tenancy agreement whereby she paid \$1,021.00 in rent per month. No admissible copy of the tenancy agreement was provided into evidence but the parties agree that the Tenant moved in around August 1, 2005, and was paying a monthly rent.

At some point, several years into the tenancy, the Tenant started acting as the resident building manager for tenancy related matters. The parties agreed that this arrangement continued for several years, leading up to the end of the tenancy. However, it also appears the Tenant and the Landlords suffered a breakdown in relations throughout 2018 and particularly in 2019, as renovations completed.

The parties both agreed that a large-scale renovation and rewiring of the entire 6-unit building was undertaken by the Landlords, starting in March of 2018. The Landlords planned to substantially upgrade the units, add walls, refresh kitchens/bathrooms, and modernize and re-wire the electrical panels throughout the building. The parties both agree that this renovation project was several years in the making, and after investing significant time and effort, the Landlords obtained vacant possession all of the other 5 units in the building by the end of February 2018. The entire building was vacant, except for some of the Tenant's belongings as of the end of February, so that renovations could begin.

Both parties agree that the Tenant was acting as the general building manager for the other 5 tenancies in the building leading up to the time all those other Tenants vacated by February 28, 2018. The parties agreed that the Tenant also cleared the vast majority of her belongings out of her rental unit by the end of February 2018, which appears to be the deadline other Tenants in the building worked towards. The renovations throughout the entire building were set to begin sometime in March 2018.

During the hearing, the Tenant asserted that she moved all her tenancy related possessions into off-site storage by the end of February 2018, and starting in March 2018, she began residing elsewhere, never again returning to sleep in the rental unit which she had occupied for many years. The Tenant asserts that, even though she cleared most of her belongings out of the rental unit by March 2018, she still had some items in storage lockers in the basement of this 6-unit complex. She stated that her "furnishings" and personal items were all moved to an off-site location (another private storage space).

The Tenant stated that starting in March 2018, she mostly had office related items (desk, microwave, chair) left in the rental unit, as she was asked by the Landlords to stay on and act as an on-site "construction manager" while the renovations unfolded in the spring of 2018. The Tenant stated that, although she stopped sleeping in the unit in early March 2018, she still attended the unit almost daily. The Tenant asserts that from March through till sometime in the summer of 2018 (July), she would come to the subject rental unit, open the door, sit down at the desk, do renovation and construction management, deal with tradespeople, and liaise with the Landlords. Then, she would leave at the end of the business day, and sleep off-site in a different location. The Tenant stated that in doing so, she would spend the core business hours in and around the building, and when she was in the subject rental unit, she had the door open, so that tradespeople could come to check in and report any issues to her.

The Tenant stated that, after acting as the building manager/construction manager from March – July or August 2018, the Landlords started to become more involved in the renovations, and she scaled back her on-site duties in the late summer of 2018. The Tenant stated that she removed her remaining furniture items (desk, microwave, etc) from the rental unit by mid-September 2018, so that renovations could continue on her unit. The Tenant stated that at this point, she still had some items spread amongst several storage lockers in the basement and in a closet (including in some lockers previously used by other Tenants in the building).

The Tenant stated that she slowly emptied her belongings out of the remaining storage lockers throughout 2018, and in early 2019. The Tenant stated that eventually, the Landlords indicated that work on the subject rental unit would be completed by April 1, 2019. Subsequently, after attending the rental unit in early April 2019 and observing some concerning issues relating to the remediation and renovation of the unit, the Tenant decided she would not ever want to move back in. The Tenant expressed this to the Landlords in writing around April 5, 2019. The Tenant pointed out that this letter was in her evidence, and she cited a name of the document. However, this document was not named as she stated it was, and it could not be located.

The Tenant asserts that her rent was paid by direct deposit by the government, and although she stopped residing in the rental unit by March 2018, she continued to allow her rent payments to be made to the Landlords until April 2019. The Tenant feels she should be entitled to this money back, including her utilities she paid throughout the renovation period, which is the basis for this application.

Having reviewed the totality of this situation, I find that as of March 1, 2018, the subject rental unit which used to be the Tenant's living accommodation and primary residence since 2005, ceased being a "rental unit" under the Act, given the substantive change in use that occurred at that time.

I note the following definitions under the Act:

"rental unit" means living accommodation rented or intended to be rented to a tenant

In making this determination, the Tenant stopped sleeping in the unit, moved almost all of her furnishings out (to off-site private storage, and a locker in the basement of the building (except basic items which would enable her to work there during the day in a role which appears to be predominantly a construction manager, rather than as a Tenant.)

The Tenant also explained that she was only there during the day, being an onsite manager during the constructions period, and she almost always left her door open so that contractors could check in, and be able to connect with her while they were on site. Although the Tenant continued paying the Landlords for the use of this apartment, even throughout the construction period, which started in March 2018, I find that with the significant change in use, and substantial change in furnishings at the start of March 2018, the subject unit stopped being a “rental unit” under the Act, and consequently, the tenancy ceased to exist at that time. I find the nature of the arrangement shifted from being a tenancy into what initially appeared, as of March 2018, to be a mutually acceptable alternative business and storage arrangement. This is when the Tenant stopped sleeping in the unit, moved most of her furnishings out, and started attending the unit during the day to manage construction activities.

I find it more likely than not that the predominant use of the unit changed from living accommodation that was primarily residential in nature, and rented under a tenancy agreement, to another legal arrangement, involving some sort of agreement to use some storage in the building, and to use the unit as an office during the day while helping with construction activities. It does not appear the latter arrangement was predominantly residential in nature.

I find the tenancy ended in March 2018, which is when the change in use materialized, and construction related duties and activities began.

I also note the following portion of the Act:

Latest time application for dispute resolution can be made

60 (1)If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

I note the Tenant filed her application on April 29, 2021, which is not within the allowable time frame. As a result, I dismiss the Tenant’s application, in full, without leave, as she did not file it within the allowable time frame following the end of the tenancy.

The entire first hearing, on October 29, 2021, was used to allow both parties to explain the nature of the tenancy, and the timelines. At the end of the hearing, I indicated that we would need to adjourn the hearing, and schedule a second hearing due to time

constraints that prevented the entire application from being heard. However, following the initial hearing, I reviewed the testimony and evidence presented by the parties, and I find a second hearing is not required, given my findings above. As noted above, the application is dismissed, in full, without leave, and no further hearings will be conducted.

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: November 1, 2021

Residential Tenancy Branch