Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed pursuant to section 51(2) of the Act;
- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and an agent for the Landlords (the Agent), all of whom provided affirmed testimony. The Agent acknowledged the Landlords' receipt of the Application and Notice of Hearing and as no concerns were raised regarding service of these documents, the hearing proceeded as scheduled. Both parties acknowledged receipt of each others documentary evidence and as a result, I have accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed pursuant to section 51(2) of the Act?

Are the Tenants entitled to the return of their security deposit or double its amount, less any portion already returned?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on November 1, 2014, and became month to month after the end of the fixed term on November 1, 2015. It also states that rent in the amount of $1,700.00 was due on the first day of each month and that a security deposit in the amount of $850.00 was paid. The parties confirmed during the hearing that this information is correct. The Tenants also stated that rent in the amount of $1,875.00 was due each month at the time the tenancy ended and although the Agent did not dispute this testimony, they stated that they could not be sure of the amount as the Landlords had not provided them with this information.

The parties agreed that the tenancy ended on or before March 31, 2020, but disputed the reason for the end of the tenancy. The Tenants argued that the tenancy ended in accordance with the Four Month Notice served on them by the Landlord on August 7, 2019, and the Agent argued that it ended as a result of a Mutual Agreement to End Tenancy (the Mutual Agreement) signed by the parties on August 7, 2019, which effectively cancelled or overrode the Four Month Notice.

The parties agreed that a Four Month Notice was personally served on the Tenants on August 7, 2019, and that the Mutual Agreement was entered into on the same date and during the same interaction.

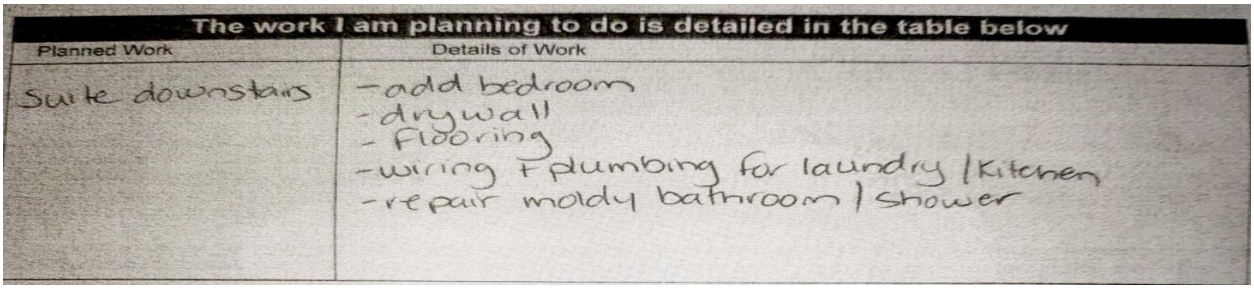
The Tenants stated that once the Landlords had served them with the Four Month Notice, the Landlords made a big deal about how inconvenient it would be for the Tenants to have to do showings and required them to sign the Mutual Agreement. The Tenants stated that it was the Landlord, and not them, who took issue with the “inconvenience” of showing the rental unit and that they had advised the Landlord that they were happy to comply with showings provided they were given proper notice. The

Tenants stated that service of the Four Month Notice and the signing of the Mutual Agreement all happened within 20 minutes on the same day and during the same interaction and that it was their understanding that the Mutual Agreement simply reinforced the Four Month Notice. The Tenants stated that at no point was it mentioned or made clear to them that by signing the Mutual Agreement, the Four Month Notice was being withdrawn, cancelled or overridden and that the Landlord had implied that the Mutual Agreement was just further agreement by the parties that the tenancy was ending on April 1, 2020, the effective date for the Four Month Notice served.

The Agent disagreed, stating that it was the Tenants who had expressed an unwillingness to be disturbed by showings and therefore the Mutual Agreement had been signed for the benefit of the Tenants, effectively cancelling the Four Month Notice. The Tenants denied ever being advised that the Mutual Agreement in any way changed or invalidated the Four Month Notice and reiterated their understanding that it was simply a reinforcement of the effective date of the Four Month Notice. When I asked the Agent to point to any portion of the Mutual Agreement, or any other written correspondence or documentary evidence before me for review, indicating that the parties agreed that the Mutual Agreement invalidated or nullified the Four Month Notice issued during the same interaction, the Agent stated that no such notation or documentation exists. The Agent followed up by stating that it is their understanding and experience that a Mutual Agreement entered into after service of a notice to end tenancy will, as a matter of course and practicality, override or invalidate any previous notices to end tenancy or agreements, and as a result, the landlords did not find it necessary to note this.

Both parties agreed that the Tenant's had been provided with compensation in the amount of one months rent prior to the end of the tenancy. The Tenants argued that this is further evidence that the tenancy ended by way of the Four Month Notice, as this compensation was due to them pursuant to section 51(1) of the Act. The Agent disagreed, stating that the Landlords simply provided this compensation to the Tenants as they believed it was fair to do so.

The Four Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated August 7, 2017, and has an effective date of April 1, 2020. The Four Month Notice indicates that the tenancy is being ended because the Landlords intend in good faith to perform renovations and repairs to the rental unit that are so extensive that the rental unit must be vacant. In the section titled "Details of Cause" it states the following:



The work I am planning to do is detailed in the table below	
Planned Work	Details of Work
Suite downstairs	-add bedroom -drywall -flooring -wiring + plumbing for laundry / kitchen -repair moldy bathroom / shower

No information was recorded on the Four Month Notice regarding whether or not the Landlords required permits for the work or had obtained all permits and approvals required by law to do the proposed work.

The Mutual Agreement in the documentary evidence before me states that the Tenants agree to vacate the rental unit by 12:00 P.M. on April 1, 2020, and although it is signed by the Landlord M.L. and the Tenant K.D., there is no signature date.

There was no disagreement between the parties that shortly after the Tenant's vacated the rental unit on in March of 2020, the rental unit was advertised for sale and ultimately sold in May of 2020. There was also no disagreement that the rental unit was not renovated or repaired in a manner that would have necessitated vacant possession prior to being sold, as only some drywall and flooring was removed. However, the parties disputed whether the Landlords were obligated to renovate and repair the rental unit as set out in the Four Month Notice. The Tenants argued that they were and that their failure to do so entitles them to 12 months compensation at $1,875.00 per month pursuant to section 51(2) of the Act. They also argued that the Four Month Notice was served in bad faith as even according to the Landlords' own documentary evidence, their intention was always to sell the property and any proposed renovations or repairs were for the purpose of selling the unit.

The Agent disagreed, stating that the Landlords did not serve the Four Month Notice in bad faith and that in any event, the Landlords were not bound by the Four Month Notice as the Tenancy ended as a result of the Mutual Agreement. Further to this, the Agent stated that the renovations and repairs required to the rental unit were more extensive than the Landlords anticipated and due to financial hardship and the pandemic, they were unable to complete these repairs and ultimately sold the home. In support of this position the Agent pointed to a written statement from the Landlords in the documentary evidence before me. As a result, the Agent argued that section 51(3) of the Act applies and the Landlords should therefore be exempted from any requirement to pay the Tenants compensation under section 51(2) as extenuating circumstances prevented

them from accomplishing the stated purpose for ending the tenancy set out in the Four Month Notice.

The Tenants responded by reiterating that the Landlords served the Two Month Notice and the Mutual Agreement in bad faith, that the Landlords either knew the true state of the rental unit prior to serving the Four Month Notice or failed to Act diligently in obtaining this information and making appropriate arrangements for things such as financing, contractors, and permits prior to the issuance of the Four Month Notice or the effective date of the Four Month Notice, and therefore these should not be considered extenuating circumstances.

The parties agreed in the hearing that the tenancy ended as scheduled on or before March 31, 2020, that the Tenants' forwarding address was received in writing by the Landlords by email on April 4, 2020, and followed up by registered mail shortly thereafter. Tracking information provided by the Tenants in the hearing for the registered mail shows that it was sent on April 3, 2020, and delivered on April 8, 2020. Although the Agent could not confirm the exact date the Landlords received the registered mail, they confirmed that it was received.

There was also a dispute between the parties regarding whether or not move-in and move-out condition inspections and reports were properly completed and given to the Tenants at the start and the end of the tenancy. The Tenants stated that no condition inspections or reports were completed with them at the start or the end of the tenancy and that they were never provided with copies of any condition inspection reports. Although the Agent stated they were unsure what occurred at the start of the tenancy, a move-out condition inspection was completed at the end of the tenancy. In support of this position the Agent pointed to the Landlords' written statement in the documentary evidence before me.

The Tenants sought recovery of $550.00 in money paid to the Landlords for a security deposit that has not been returned to them. Although the parties agreed that $300.00 was returned to the Tenants by the Landlords by email money transfer (etransfer) sent on April 14, 2020, they disputed why the remaining balance was not returned. The Agent argued that the Tenants had verbally agreed that the Landlords could keep the $550.00 withheld for damage to the rental unit. The Tenants disagreed, stating that although the Landlords sent them an offer by email to withhold the $550.00 for damage, they never agreed to or responded to the email. The Tenants stated that the etransfer of $300.00 was sent by the Landlords at the same time as the email, and that they accepted the etransfer on April 28, 2020, after the Landlord's failed to return the

remaining balance owed to them or file a claim with the Branch seeking its retention within the required period.

The Agent argued that by accepting the $300.00 etransfer, the Tenants had therefore agreed to the Landlords' offer that the $550.00 remaining balance be retained for damage to the rental unit. The Agent also stated that in their experience, the Tenants should be prevented from seeking the remaining balance of their security deposit as they did not immediately file an Application with the Branch seeking the return of the balanced after the Landlords' email offer and the return of only $300.00 on April 14, 2020.

The Tenants also sought recovery of the $100.00 filing fee.

Analysis

In the hearing the Tenants testified that rent in the amount of $1,875.00 was due each month at the time the tenancy ended. Although the Agent did not dispute this testimony, they stated that they could not be sure as this information had not been provided to them by the Landlords. As there is no documentary or other evidence before me for consideration to the contrary, I accept the Tenants' undisputed and affirmed testimony that rent in the amount of $1,875.00 was due each month at the time the tenancy ended. I also accept as fact that the tenancy ended on or before March 31, 2020, and that the Landlords received the Tenant's forwarding address in writing by email on April 4, 2020. I also find that the Landlords received a physical copy of the Tenants' forwarding address in writing, by registered mail, on August 8, 2020, the date the Canada Post tracking information indicates it was delivered.

Although the Agent argued that the Mutual Agreement overrode or nullified the Four Month Notice served on the Tenants only minutes before, there is nothing in the Mutual Agreement, the Four Month Notice or any of the documentary evidence before me, aside from the Landlords' written statement, that indicates in any way that the parties agreed that the Mutual Agreement changed, negated, or nullified the Four Month Notice or that the parties were aware of any such nullification of the Four Month Notice, should it exist, at the time the Mutual Agreement was entered into.

Although I agree that a Mutual Agreement to End Tenancy signed subsequent to service of a notice to end tenancy *may* be found to replace or invalidate the previous notice to end tenancy, I do not find that this is required or that this is the case here as there was no meaningful passage of time between service of the Four Month Notice on

the Tenants and signing of the Mutual Agreement. I am also satisfied that the Tenants were intentionally mislead by the Landlords, either explicitly or by implication, to believe that the Mutual Agreement was in addition to, not in place of, the Four Month Notice served on them during the same interaction, in an effort to have them sign it, as it has the same effective date and does not indicate that it overrides or invalidates the Four Month Notice.

Further to this, the Tenants were provided with one month's compensation before the end of the tenancy, which I find is further evidence that the tenancy ended by way of the Four Month Notice rather than by way of a Mutual Agreement, as this amount of compensation is to be paid to tenants who are served with a Four Month Notice pursuant to section 51(1) of the Act and there is no evidence in the Mutual Agreement that one months compensation was to be provided to the Tenants.

For the following reasons I am also not satisfied that the Four Month Notice was served in good faith. Although the Four Month Notice states that the reason for ending the tenancy is because the Landlords intend in good faith to complete renovations and repairs so significant that vacant possession of the rental unit is required, no permits or approvals were ever obtained and the Agent argued in the hearing that the Landlords were unaware of the true scope and cost of the renovations required. As Four Month Notice's necessitate that the renovations and repairs to be completed are so significant that vacant possession is required, and that all approvals and permits required by law to complete them be in place prior to the issuance of the notice, I find that it was therefore incumbent upon the Landlords to have properly and diligently assessed the full extent of the renovations required and the costs associated with them, prior to service of the Four Month Notice.

While the Agent argued that the scope of the renovations changed so drastically after the Tenants vacated due to the state the rental unit was left in by the Tenants, no documentary evidence other than the Landlords' unsworn and self-authored statement was submitted in support of this argument, such as a condition inspection report, photographs of the rental unit prior to any renovations, or a quote or assessment from a contractor, and the Landlords did not appear in the hearing. As a result, I am not satisfied that the scope of the renovations changed so drastically, or at all, from what is listed on the Four Month Notice, that the Landlords would not have been able to complete the renovations as planned, had they planned accordingly or truly intended to renovate the rental unit in a manner that necessitated vacant possession.

Instead I find that the Landlords never truly intended to renovate and repair the rental unit in a manner that necessitated vacant possession and instead planned only to complete cosmetic repairs as a “facelift” prior to placing it on the market for sale. The Landlords written statement, as well as the statement submitted by them from their realtor, clearly indicate that the primary reason for ending the tenancy was sale of the rental unit and that renovations and repairs were simply ancillary to this goal in order to increase the value of the home. The Tenants provided documentary evidence in the form of an email from the Landlords to authors of a classified advertisement that less than a week after gaining possession of the rental unit, the Landlords were already preparing the rental unit for sale.

Further to this, if the Landlords intentions with regards to the Four Month Notice had been genuine as argued by the Agent, I am left perplexed by the need for the Mutual Agreement as a way to reduce the impact of showings on the Tenants, as the stated ground for ending the tenancy in the Four Month Notice was renovations and repairs which necessitated vacant possession. As a result, the Landlords should not have needed to show the rental unit for any purpose, unless the had an ulterior motive for ending the tenancy, such as selling it.

To me the Landlords’ issuance of the Mutual Agreement during the same interaction in which a Four Month Notice was served is a clear attempt by the Landlords to deceive or mislead the Tenants in an effort to avoid any obligations they might have under the Act in relation to completing the renovations or repairs stated as the grounds for ending the tenancy in the Four Month Notice, as their true intention was to sell the rental unit, not renovate and repair it in a manner that necessitated vacant possession. I also find that the Landlords were attempting to avoid any obligations under section 51(2) of the Act, as they never truly intended to complete major renovations or repairs, and in fact, did not do so.

Section 5 of the Act states that landlords and tenants may no contract outside of the act and that any attempt to avoid or contract outside of the Act or the regulations is of no effect. Further to this, I note that the mutual agreement is not dated, which is a requirement under section 52 of the Act. Based on the above, I therefore find that the Mutual Agreement is invalid and of no force or effect pursuant to sections 5 and 52 of the Act.

Having made this finding, I am therefore satisfied that the tenancy ended on March 31, 2020, as a result of the Tenants’ compliance with the Four Month Notice served on them by the Landlords on August 7, 2020.

Section 51(2) of the Act states that if 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 if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is equivalent of twelve times the monthly rent payable under the tenancy agreement.

Although the Agent argued that compensation under section 51(2) of the Act is not owed to the Tenants as the tenancy ended as a result of a Mutual Agreement, I have already found above that the Mutual Agreement was invalid and that the Tenancy ended as a result of the Four Month Notice. As a result, I dismiss this argument.

The Agent stated that the Landlords had encountered financial hardship which rendered them unable to renovate or repair the rental unit in the manner specified in the Four Month Notice and that the Landlords were therefore required to sell the home. As a result, the Agent argued that extenuating circumstances existed and that the Landlords should therefore be excused from any obligations to pay the Tenants compensation under section 51(2) of the Act, pursuant to section 51(3) of the Act. I do not agree. Although a written statement was submitted by the Landlords to this effect, no financial or other corroborating documentation was submitted in support of their claim that extenuation circumstances existed. As a result, I am not satisfied that they did. Further to this, I have already found above that the scope of the renovations did not change at all, or in any significant or meaningful way, as a result of state it was left in at the end of the tenancy.

Based on the above, dismiss the Agent’s arguments that the Landlords should be exempt from paying compensation to the Tenants pursuant to section 51(3) of the Act, and as there was no disagreement that the rental unit was not significantly renovated and repaired in a manner that would have necessitated vacant possession of the rental unit, I therefore order the Landlords to pay the Tenants compensation in the amount of $22,500.00 pursuant to section 51(2) of the Act, which represent twelve times the monthly rent amount of $1,875.00.

Having made these findings, I will now turn to the Tenants claim for the return of their security deposit. Although the Tenants have only claimed for the return of $1,300.00 of their security deposit, which represents less than double the amount of their security deposit less the amount already returned, Policy Guideline #17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for

the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit where the Act requires this. There is nothing in the Application that indicates to me that the Tenants have expressly waived their right to be awarded double the amount of their security deposit and no testimony was provided in the hearing to that affect. As a result, I find that the Tenants have not waived this right.

Section 38 (1) of the Act states that except as provided in subsection (3) or (4)(a), of the Act, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

There was a dispute between the parties regarding whether or not condition inspections and reports were completed and served on the Tenants as required by the Act and regulations at the start and end of the tenancy, and although the Agent argued that they were, there is no documentary or other evidence before me to indicate that this is the case, such as copies of condition inspection reports. Further to this, the Tenants denied that any condition inspections or reports were completed. As a result, I am not satisfied that condition inspections and reports were completed by the Landlords with the Tenants as required by the Act and regulations. As a result, I find that the Landlords extinguished their rights in relation to claims against the security deposit for damage to the rental unit, pursuant to section 24(d) of the Act. As I find that the Landlord's extinguished their rights in relation to the security deposit first and Policy Guideline #17 clearly states that the party who breached their obligation with regards to the security deposit first will bear the loss, I am therefore satisfied that the Tenants did not extinguish their right to claim for the return of their security deposit under either section 24(1) or 36(1) of the Act.

There is no evidence that the Landlords filed an Application with the Branch seeking retention of the Tenants' security deposit and although the Agent argued that there was a verbal agreement in place that the Landlord was entitled to retain $550.00 of the Tenants' security deposit, I do not agree. The Tenants denied that any such verbal agreement was in place and although there is evidence that the Landlords made an offer to the Tenants by email to this effect, there is no evidence before me demonstrating that this offer was ever expressly accepted by the Tenants. Although the Agent argued that the Tenants accepted this offer when they accepted the etransfer for only a portion of the security deposit, again I do not agree.

First, the Tenants waited until after the timeline for the Landlords' to have filed an Application seeking retention of their security deposit had lapsed before accepting the etransfer. As a result, I find that they were simply accepting the return of a portion of the security deposit owed back to them by law. Second, section 38(4)(a) of the Act requires that any agreement for retention of a security deposit to be in writing. Third, I find that accepting a portion of money which is rightfully owed to you under the Act in no way constitutes an express or implied agreement that only the partial amount accepted is owed. Such a finding would be illogical and could result in such absurdities as arguments that landlords who accepted partial rent payments were therefore agreeing that the remaining rent was not owed, which would, in my mind, simply be preposterous.

Although the Agent argued that the Tenants should be prevented from seeking the return of the remaining balance of their security deposit as they did not immediately file an Application with the Branch seeking its return when only a portion was returned to them on August 14, 2020, I find no legitimacy to this argument or any basis for it in law. Section 60 of the Act permits parties to file an Application for Dispute Resolution up to two years after the end of the tenancy, unless there is an earlier statutory deadline set out in the Act or regulations. As the Application was considered filed by the Tenants on April 30, 2020, approximately 30 days after the end of the tenancy and significantly earlier than the two year statutory limit, I therefore dismiss this argument as it is without merit.

Based on the above I find that there was no lawful basis for the Landlords to have retained any portion of the Tenants' security deposit and that they were therefore required by section 38(1) of the Act to return it to the Tenants, in full, by April 19, 2020, which is 15 days after the date they received the Tenants' forwarding address in writing after the end of the tenancy, pursuant to section 31(1) of the Act. As the Landlords returned only $300.00 of the $850.00 security deposit as required within the prescribed period, I therefore find that the Tenants are entitled to $1,400.00; double the initial $850.00 paid, less the $300.00 already returned, pursuant to Policy Guideline #17 and section 38(6) of the Act.

As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, the Tenants are therefore entitled to a Monetary order in the amount of $24,000.00; $22,500.00 for twelve months rent, $1,400.00 for double the amount of their security deposit, less the amount already returned, plus $100.00 for recovery of the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$24,000.00**. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 16, 2020

Residential Tenancy Branch