Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT / MNDL-S, MNRL, FFL**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit in the amount of $904.24 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' for:

- the return of the security deposit of $700 pursuant to section 38;
- a monetary order for $18,600 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant GR attended the hearing on behalf of both tenants. The landlord attended the hearing and was assisted by an agent ("**CN**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and GR confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. I find that the tenants have been served with these documents in advance in accordance with the Act.

GR testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and a supporting evidence package. However, the evidence package did not contain all of the documents that GR provided to the RTB in advance of the hearing, namely 26 pages of text messages. The landlord was not able to access these text messages during the hearing and did not know their contents.

Rule of Procedure 3.14 requires that an applicant's evidence be submitted no later than 14 days before a hearing. The tenants failed to do this. They did not provide any explanation as to why they did not include the text messages in the evidence package. The text messages were dated prior to the 14-day deadline.

As such, I excluded the text messages from evidence. All other documents submitted to the RTB were entered into evidence.

Preliminary Issue

At the hearing, GR agreed to pay the full amount of the outstanding hydro bill that the landlord had claimed compensation for ($154.24). As such, I order that the tenants pay the landlord $154.24.

The balance of the landlord's monetary claim is $750 and relates to the cost incurred for junk removal from the rental unit after the tenancy.

Issues to be Decided

Is the landlord entitled to:

1) an order of possession;
2) a monetary order for $750;
3) recover the filing fee;
4) retain the security deposit in partial satisfaction of the monetary orders made?

Are the tenants entitled to:

1) the return of the security deposit
2) a monetary order of $18,600; and
3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2016. Monthly rent was $1,550 at the end of the tenancy and was payable on the first of each month. The tenants paid the landlord a security deposit of $700 and a pet damage deposit of $700. The landlord returned the pet damage deposit shortly after the tenants vacated the rental unit. The landlord continues to hold the security deposit in trust for the tenants.

The parties did not complete a move in or move out condition inspection report.

On June 30, 2020, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "**June Notice**"). On it, he indicated that the reason for issuing it was so that the landlord or landlord's close family member could occupy it.

CN testified that the June Notice was incorrectly completed, and that the actual reason for ending the tenancy was because the landlord had sold the residential property, and that the buyer had asked the landlord to issue the notice so that he could occupy the rental residential property. CN testified that once the landlord discovered this error, he issued a new Two Month Notice to End Tenancy on July 17, 2020 (the "**July Notice**") and served it on the tenants accompanied by a signed letter from the buyer indicating that the buyer intended to occupy the residential property.

The landlord submitted into evidence the Notices, the letter from the buyer, and an addendum to the contract of purchase and sale of the residential property, signed July 3, 2020, wherein the buyer and the landlord agree that the buyer will give written notice to the landlord that he intends to occupy the residential property, and that the landlord will issue a notice to end tenancy to the tenants. The addendum indicates that the contract of purchase and sale was entered into on June 17, 2020.

CN testified that following the issuance of the June Notice but prior to the issuance of the July Notice, the landlord advised the tenants of the sale of the residential property and told them that the June Notice was issued because the buyer intended to move into the residential property.

The tenants do not dispute that the buyer moved in after taking possession of the residential property. Rather, they argue that they are entitled to twelve times the amount of monthly rent, per section 51(2) of the Act, because the landlord did not use the residential property for the stated purpose indicated on the June Notice (that is, occupied it himself), notwithstanding the fact that the landlord has admitted the June Notice was issued in error, and that the landlord issued a corrected Notice less than one month later.

The landlord argues that the June Notice was never intended to indicate that he was to move into the residential property, and that once he learned of the correct procedure to follow to end the tenancy to give effect to the buyer's wishes, he issued the July Notice. He argues that no amount should be payable under section 51 of the Act.

On July 20, 2020, via email, the tenants gave the landlord written notice that they would be ending the tenancy on July 29, 2020 (per section 50 of the Act) and provided their forwarding address. At the hearing, the landlord confirmed receipt of this email on July 20, 2020.

In the last week of July or the first week of August (the parties could not recall the exact date), the landlord returned the pet damage deposit ($700) to the tenants, but not the security deposit ($700).

On the day the tenants moved out, the landlord's realtor did a walkthrough of the rental unit with the tenants but did not complete a move out condition inspection report.

GR testified that the realtor noted that some furniture was left in the rental unit, but GR testified that these items were there when they moved in.

GR admitted that he left some belongings in the garage at the end of the tenancy, but that much of the garage was filled with items that were there at the start of the tenancy.

CN testified that tenants left a portable dishwasher, small items of furniture, bikes, scooters and toys in the rental unit, as well as meat and other organics in the deep freezer. The garage was also filled with scrap lumber, paint cans, boards, and other debris. CN testified that a significant amount of cleaning was after the tenants left and that the landlord had to hire a junk removal company at a cost of $750 to attend the rental unit and remove a significant amount of garbage and discarded furniture from the rental unit. The landlord provided an invoice supporting this amount. CN estimated that only 30% of the items removed from the garage were there at the start of the tenancy.

GR denied that the furniture, toys, dishwasher, or bikes left in the rental unit were the tenants. He admitted to leaving items in the freezer. He testified that, after moving out of the rental unit, the landlord asked him to remove the tenants' belongings from the unit, and that he asked the landlord to specify exactly what of theirs they had left. He testified that he never received a full list, so he did not return. He argued that, had the landlord provided a list of what needed to be removed, he would have attended the rental unit to remove it, and that the hiring of a junk removal company would not have been necessary.

Analysis

1. Are the tenants entitled to compensation under section 51(2) of the Act?

Section 51(2) of the Act 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
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> (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
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> (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.

It is not disputed that the residential property was not used for the purposes stated on the June Notice. The parties agree that the buyer moved into the residential property. The tenants agree that this was the stated purpose on the July Notice.

The purpose of section 51(2) of the Act is to protect tenants from unscrupulous landlords. The penalty set out is intentionally harsh (one years' rent payable to the tenant) and intended to dissuade landlords from attempting to skirt the Act. There is nothing in the Act to suggest that the purpose of this section is to punish landlords for inadvertent errors that had been corrected, which cause no harm to a tenant.

At no point did the landlord attempt to deceive the tenants about the reason the June Notice was issued. Even prior to issuing the July Notice, the landlord communicated to the tenants that the reason for ending the tenancy was to fulfill a condition of the contract of purchase and sale.

I find that the issuance of the June Notice was an innocent error. The landlord was unsure of the correct process by which to end the tenancy to allow the buyer to move into the residential property. The landlord was forthright with the tenants about the reason for ending the tenancy. He promptly corrected his error when learning of the correct procedure to follow by issuing the July Notice.

As such, I find it would be inappropriate to order that the landlord pay the tenants 12 times the amount of monthly rent. It would be unjust to punish the landlord for an inadvertent error and to do so would disincentive other landlords from correcting such errors.

Additionally, I find that, prior to the issuance of July Notice, the tenants knew that the true reason for the tenancy ending was that the buyer intended to occupy the residential property.

Section 68 of the Act states:

> **Director's orders: notice to end tenancy**
> **68**(1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
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> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
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> (b) in the circumstances, it is reasonable to amend the notice.
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> (2) Without limiting section 62 (3) *[director's authority respecting dispute resolution proceedings]*, the director may, in accordance with this Act,
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> (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
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> (b) set aside or amend a notice given under this Act that does not comply with the Act.

In the circumstances, I find it is appropriate to amend the June Notice to indicate the correct reason for the landlord ending the tenancy.

For the foregoing reasons, I dismiss this portion of the tenants' application.

2. Is the landlord entitled to recover the cost of the junk removal?

Section 23(4) of the Act requires the landlord to complete a condition inspection report at the start of the tenancy. Such a report is important, as it documents the state of the rental unit before the tenants move in. The landlord did not do this.

The parties disagree as to what items were in the rental unit when the tenancy started. GR testified that the only items left in the rental unit by the tenants were some items in the garage and the organics in the freezer. He denied that the tenants left anything else. Anything else in the rental unit at the end of the tenancy, he says, was there at the start.

The landlord bears the onus to prove on a balance of probabilities that the tenants left the items in the rental unit that he alleges. He also bears the onus to prove that the cost of the junk removal company was incurred due to the tenants leaving their belongings in the rental unit after the tenancy ended. Without a move in condition inspection report, I cannot say what items were in the rental unit at the start the tenancy and what items were left in the rental unit at the end of the tenancy.

GR has admitted that the tenants did leave some items were left in the rental unit after they moved out. I am unsure what percentage of the total items removed from the rental unit by the junk removal company these items represent. Aside from the items GR admitted to leaving in the rental unit, I find that the landlord has failed to discharge his evidentiary burden to show that the tenants left items in the rental unit at the end of the tenancy.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean at the end of the tenancy. Based on GR's admission that they left items in the freezer and in the garage, I find that the tenants did not leave the rental unit reasonably clean when they left. I cannot say, however, to what extent this failure caused the landlord damage.

In the circumstances, I find that nominal damages should be award to the landlord. Policy Guideline 16 states:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In the circumstances, I find that an award of $150 is appropriate. I order the tenants to pay the landlord this amount.

3. Are the tenants entitled to the return of the security deposit?

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenancy ended on July 29, 2020 and that the tenants provided their forwarding address in writing to the landlord on July 20, 2020 via email. I find that, as the landlord acknowledged receiving the forwarding address on this date, it has been sufficiently served for the purposes of this Act (per section 71 of the Act).

While the landlord returned the pet damage deposit within 15 days of the end of the tenancy, he did not returned the security deposit to the tenants within 15 days of the end of the tenancy, or at all.

The landlord did not make an application for dispute resolution claiming against the security deposit within 15 days of the end of the tenancy. He made his application on October 13, 2020.

It is not enough for the landlord to allege the tenants left items in the rental unit after they vacated which caused him to incur costs during the 15-day period. He must actually apply for dispute resolution, claiming against the security deposit, during this time.

The landlord did not do this. Accordingly, I find that he has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenants double the amount of the security deposit ($1,400).

Each party has been partially successful in their application and has partially defend themselves against the other's application. Accordingly, I decline to reimburse either side their filing fee.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenants $1,095.76, representing the following:

Double Security Deposit	$1,400.00
Hydro Payment	-$154.24
Nominal Damages	-$150.00
Total	**$1,095.76**

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: January 6, 2020

Residential Tenancy Branch