Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on June 28, 2022:

- to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice")
- seeking the Landlord's compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

The Tenant amended their Application on October 24, 2022 to claim for compensation for their monetary loss or other money owed.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 14, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to present oral testimony during the hearing.

At the start of the hearing, the Landlord confirmed they received the Tenant's initial Application and evidence, and the amended Application. The Tenant confirmed they received the original evidence from the Landlord for this hearing; specifically, this was the Landlord's own notice of a separate Application for Dispute Resolution they filed more recently.

Preliminary Matter – Tenancy ended

At the start of the hearing, the Tenant confirmed they moved out from the rental unit on September 24, 2022. For this reason, I withdraw the issue of a cancellation of the Two-Month Notice through amendment of the Tenant's Application.

Because the landlord-tenant relationship has ended, I amend the Tenant's Application to withdraw the issue of the Landlord's compliance with the legislation and/or tenancy agreement.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in its entirety; the Landlord provided the same. Both parties confirmed the basic terms in the hearing: rent at $4,400 payable on the 25th each month (even though the agreement indicates the 1st of each month); a security deposit of $2,200, and a later pet damage deposit of $2,200. The tenancy started in August 2019 and over the course of the tenancy rent increased to $4,460 per month – this occurred in October 2021 when the parties renewed the tenancy agreement.

The Landlord specified in the hearing that the Tenant was responsible for yard maintenance on a regular basis and was not permitted to use the hot tub.

In their evidence, the Tenant included a 40-page document that set out the history of the issues between them and the Landlord. They stated that their differences with the Landlord started in May 2022. They submit the Landlord's actions throughout that time amount to a loss of quiet enjoyment.

The significant points from the Tenant's written account are as follows:

- they asked the Landlord for repairs throughout the tenancy "but [the Landlord] didn't care"
- the Landlord deposited rent cheques "several days in advance for multiple times" – the Tenant listed four occasions from 2021 and 2022
- the Landlord listed the house for sale in 2022, listing it on May 27th as available for rent
- three groups of visitors came to view the home, with "two said they want to rent and rent to own, I let them in but . . . the third group came just to rent and I refused to let them in"
- this involves the Landlord "harassing me in [their] text messages, emails and visits" – there were many messages about the sale of the home vs. a rent-to-own plan
- after this, the Landlord tried to convince the Tenant to leave, all with different reasons, such as their own family member moving in, or damage to the home by the Tenant – this led to insults, "making disturbance and shouting at my door, trespassing, accusing me of lying and bad behaviour"
- when visiting, the Landlord would speak to the Tenant's children directly, and this involved statements that the Tenant was not properly caring for the yard
- the Landlord made statements about ending the tenancy by whatever means possible
- the Tenant sent emails regarding individual repair issues; however, the Landlord would visit to inspect the rental unit and not make repairs or address those issues
- for the final rental unit inspection meeting, the Landlord tried to claim the Tenant caused damaged throughout the rental unit.

In sum, the Tenant wrote:

> [The Landlord] ignored the rule of quiet enjoyment and our right to live peacefully and harassed my kids and I. [The Landlord] insulted me and accused me of being selfish several time.

The Tenant had an inspection meeting with the Landlord on the final day of the tenancy. Since that time the Landlord did not return the security deposit and the pet damage deposit to the Tenant. The Tenant provided their forwarding address to the Landlord via printed form on October 11.

The Tenant claims for the disturbance, and the return of the deposits:

- $17,840, being the full amount of rent for four months May– September, when the Tenant "could not stay calmly and quietly without disturbance in this property"
- $4,400, the total for both the security deposit and the pet damage deposit

In the hearing the Tenant reviewed all of the points raised in their written submission. The Tenant confirmed they did not suffer any restrictions on entry into the rental unit and were not limited in their use of the rental unit or yard. The Tenant answered in the affirmative when I asked if the Landlord gave notices of their visits. The Tenant told the Landlord that they did not want any more visitors to the rental unit in line with the Landlord's sale of the rental unit.

In response to the Tenant's Application, the Landlord described "softly" trying to negotiate with the Tenant; however, the Tenant would respond "no" or "don't talk to me". The Tenant remained "always suspicious". They stated their purpose to sell the house was always clear to the Tenant. The Tenant blocked entry of potential buyers, and never felt comfortable to talk about the Landlord's plans for selling the house.

Additionally, the Tenant never specified to the Landlord that they wanted advance notice of the Landlord's visits.

The Landlord filed an Application for Dispute Resolution in relation to this tenancy on October 8, 2022. The Landlord submitted the Notice of Dispute Resolution in relation to that Application as evidence in this matter.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That a damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. Additionally,

the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 60 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

The Tenant claimed the full amount of rent for four months because of the ostensible violation of their right to quiet enjoyment. This is set out in s. 28 of the *Act*, which includes the rights to:

- reasonable privacy
- freedom from unreasonable disturbance
- exclusive possession, subject to the Landlord's right of entry under the *Act*.

This concept of quiet enjoyment is explained in some detail in the *Residential Tenancy Policy Guideline 6: Entitlement to Quiet Enjoyment*. This is "substantial interference with the ordinary and lawful enjoyment of the premises". Also:

> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In the final stages of this tenancy – that is to say, during the final four months – the Landlord was trying to complete the sale of that rental unit property. I find the Tenant was well aware of what the Landlord was trying to accomplish. The Tenant obviously realized this meant an end to the tenancy. I conclude the Tenant was aware of the different situation at the rental unit, and this necessarily required more direct hands-on work from the Landlord in order to accomplish the sale. This necessarily meant a higher-then-usual frequency of communication with the Landlord on the rental unit itself.

I find, overall, the Tenant did not provide a more objective third-party account of their relationship with the Landlord during this time. There were no accounts of witnesses to the communication from the Landlord described by the Tenant here. This would carry more weight than what appears to be the Tenant's own record of their reactions to the Landlord asking questions on rental unit maintenance and the state of the yard, for assistance with potential buyers viewing the rental unit, and discrepancies or their need for clarification on the Landlord's online ad for the sale of the home.

I find the Tenant's account does not present a day-after-day continual breach of quiet enjoyment. They documented events that occurred outside of the four-month timeframe they are complaining about; for example, the early rent cheque deposits were not

affected during this timeframe. The Tenant did not present a running log of daily interruptions or interference from the Landlord; therefore, I find a full rent reduction – which *would* represent an amount for continual, constant, and daily interference – is not warranted for that reason alone.

The Tenant confirmed in the hearing that they were at no time restricted entry to the rental unit, and there were no limitations of their access to the rental unit property. I find sufficient messaging was in place to show they were aware of the Landlord's visits, and the Tenant made it clear to the Landlord that advance notice was necessary.

On communication in general, I find the Tenant equally contributed to the cycle of arguing via text messaging or email. The Tenant had the choice to cease this method of communication or set boundaries around that to establish that any deviation from that would constitute a breach of their quiet enjoyment. There is no evidence of that. I find the Tenant contributed to, and was most often the instigator of, the tense communication. I see no evidence of the Tenant adapting their approach or making clear to the Landlord their desire for a different mode of communication. Their tone throughout was accusatory and bitter. The Tenant could have established limits, or chosen not to respond to emails and texts, but they continued.

In sum, on my evaluation of the evidence I find there was no disturbance to the Tenant that was objectively measured or observed by others. The Tenant described "trauma" and "stress" but I find they were not making that clear to the Landlord at any time. Instead, the Tenant continued to argue throughout.

On the Tenant's claim for compensation, I find that it is an attempt to penalize the Landlord for some conflict that the Tenant certainly contributed to, or instigated, entirely on their own. I find this piece of it, without quantification, is simply a revenge claim. At most what the Tenant described, aside from their reactions to communication from the Landlord, was inconvenience, or slight impositions on their time to assist the Landlord with selling the rental unit.

I dismiss the Tenant's claim for the equivalent of four months' rent, with no evidence of a breach of their quiet enjoyment that they did not instigate or contribute to.

For the return of the security deposit and pet damage deposit, as claimed, the *Act* s. 38(1) states:

> 1) . . .within 15 days after the later of
>
> (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay. . . any security deposit . . .to the tenant

(d) make an application for dispute resolution claiming against the security deposit

The tenancy ended on September 24. The Landlord filed an Application for Dispute Resolution separately on October 8, 2022. That is within the prescribed 15-day limit as set out in s. 38. The disposition of the security deposit and the pet damage deposit is the subject of the upcoming scheduled hearing; therefore, I make no order for their return to the Tenant without a final decision in that separate hearing process. For this, I dismiss the Tenant's claim without leave to reapply.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety, without leave to reapply. Because the Tenant was not successful in their Application, I find they are not entitled to recover the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 16, 2022

Residential Tenancy Branch