Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the tenant: MNSD, MNETC
For the landlord: MND-S, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice); and
- a return of their security deposit.

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The tenant, the tenant's assistant (RO), the landlord, and the landlord's legal counsel (counsel), attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were affirmed, apart from counsel, who is an officer of the court.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to the monetary compensation sought?

Is the landlord entitled to the monetary compensation sought and recovery of the cost of the filing fee?

Background and Evidence

The tenant said that their tenancy began on February 25, 2008, and the tenant vacated the rental unit on July 16, 2021. The tenant said the monthly rent at the end of the tenancy was $1,275.

Tenant's application

12 months' rent claim –

The tenant's monetary claim is $15,300, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at $1,275 per month.

The tenant wrote in their application the following:

> *I was evicted on the basis that the city was requiring the building to undergo extensive renovation including changing it from a four plex back into a single family home. This put me in a serious situation and almost resulted in my family becoming homeless. In June 2021, ad was discovered for my former unit and only cosmetic renovations had been done and upon calling the city I found out*

that the city had not required renovations nor had any permits been granted for that unit

[Reproduced as written]

The Notice received from the landlord was dated April 7, 2021, listing an effective move-out date of June 30, 2021. Filed in evidence by the landlord was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse. The landlord wrote on the bottom of page 2 of the Notice, as follows:

ATTACHED "Letter from City of Burnaby" to compliance. Because of the conversion to "Single family" dwelling, I will be moving back to the house at [redacted], Burnaby. My present house in Vancouver will be on the sale market next week.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord's position in this matter, which also summarized their submissions at the hearing, is reproduced in their written statement, in part, as follows:

At the time of the tenancy, the premise of [redacted], Burnaby, BC was a 3-unit residential property. I resided in one of the units and the 2 units were rented under separate tenancy agreements. These two units were initially unauthorized secondary suites

In 2021, I was informed by City of Burnaby that I could no longer use the premises as a multi-unit space but had to convert the premises back into a single family dwelling. I surmised by this direction that I could no longer rent out the units as status quo. Subsequently, I have to apply to the City of Burnaby to legalize the unauthorize secondary suites. (Appendix 3 : City of Burnaby permit)

In accordance with the City of Burnaby's direction, on March 30, 2021, I gave notice to all tenants of the premises, including [redacted], to vacate the premises by the end of june 2021. [redacted] insisted that I use the proper tenancy form to end the tenancy. Per her request, on April 7, 2021, I personally served [redacted] with the end of tenancy form. (Apprndix 4a & 4b : End of Tenancy)

Specifically, I was not necessarily required to make substantial renovations to the premises to change it back into a single family dwelling. I was merely to change the use of the premises from multi-unit to single.

Since the end of [redacted]'s tenancy, I have resided in the premises as my principal residence. I did not rent out anyn parts of the premises until my secondary suite was approved by the City Of Burnaby, around a year after these events.

[Reproduced as written except for anonymizing personal information to protect privacy]

At the hearing, the testimony showed the residential property is a 3-unit building, with 3 separate entrances and 3 separate hydro meters. One unit is in the whole of the ground floor and the other 2 units are in the upper level. The tenant resided in one of the two upper units.

The landlord said they filed an application with the city to keep the floor plan as is, but were not successful. The landlord also said that they moved into the lower unit and the plan was to apply for a secondary suite. The landlord submitted they received the permit in December 2021, made the renovations and re-rented the rental unit in July 2022. The landlord explained all existing tenants had to vacate as the city required smoke detectors in all three units to be linked together. The landlord stated that the two rental units on the second floor, which included the tenant's unit, sat empty until they were re-rented in July 2022.

Counsel submitted that the landlord could have filed a 1 Month Notice to comply with a government order, which was shown by the letter filed in evidence by counsel, shortly after the hearing.

The tenant submitted that there was no good faith on the part of the landlord when they issued the 2 Month Notice. RO submitted that the letter from the city gave the landlord two options, one of which was to apply for a building permit application with drawings for approval to reflect the current floor plan.

Claim for a return of their security deposit –

The tenant's claim is $1,100, which is the amount of their security deposit of $550, doubled. The tenant explained in their application, the following:

> *Double deposit as landlord has not returned deposit nor did he indicate any issues or damages at moveout. I have repeatedly requested deposit for a year. He was supplied with etransfer info in July 2021 and returned some overpayment of rent using this method, but not deposit. Gave him info again on June 27, 2022 including e transfer info and forwarding address.*

The tenant submitted that the landlord was provided their written forwarding address in June 2022 by text and email. The tenant filed copies of text message between the landlord and tenant.

The landlord said they did not return the security deposit because of damage to the rental unit. The landlord said that they received the tenant's forwarding address in September or January, 2022.

Landlord's application

The landlord's monetary claim is $650, comprised of $100 for cleaning, $200 for carpet damage, $150 for painting, and $200 for a partial charge for kitchen cabinets.

The landlord wrote the following in their application:

> *After the tenant moved out, the landlord had to make the following repairs: 1. replaced the damaged carpet with hardwood flooring, 2. painted the unit due to peeling paint, 3. repaired the damaged kitchen and washroom cabinets, and 4. cleaned the unit. The tenant left a large amount of burned wood soot in the fireplace and the cabinet doors in the kitchen and washroom were damaged. The carpet that was installed by the landlord in 2018 was damaged and dirty beyond usual wear and tear.*

The landlord said that the tenant left the rental unit very messy, requiring a cleaning, which including sweeping. The landlord said they paid someone $100 in cash.

As to the carpet damage, the landlord submitted that the carpets were newly installed in 2018, and they were left damaged and dirty beyond normal wear and tear. At the hearing, the landlord said the carpets were installed in 2016. The landlord submitted that they did not replace the carpet, because they installed hardwood after getting the permit. The landlord's claim is for partial cost of the hardwood floor installation.

As to the painting claim, the landlord said the paint was peeling throughout the rental unit. The landlord said they could not remember the last time the rental unit was painted, but believed it was 1 or 2 times during the tenancy.

As to the claim for cabinets, the landlord submitted that the washroom cabinet and kitchen cabinets were damaged.

The landlord's evidence included copies of photographs of the rental unit at the end of the tenancy and an invoice from a construction company, dated April 11, 2022, listing 8 items of work done for the "renovation" to the home.

The landlord confirmed that there was no move-in or move-out condition inspection report (Report).

The tenant responded and said that the landlord did not paint the rental unit, rather it was the tenant's father who painted the unit during the tenancy. Additionally, the tenant said the landlord never made any repairs during the tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenant's application –

12 months compensation

Section 51(2) of the Act provides that the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable time after the effective date of the Notice, and if the rental unit has not been used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from complying with section 49.

In the matters before me, the landlord said the rental unit sat empty, or unoccupied, until the landlord received the necessary permits in December 2021, made renovations during 2022, and re-rented the rental unit for a higher rent in July 2022.

Counsel submits that the landlord could have issued the tenant a 1 Month Notice to End the Tenancy to comply with a government order. However, the landlord did not, and that is not the issue before me.

The landlord could also have applied to the RTB to end the tenancy to undertake major renovations or repairs, but again, that is not the issue before me.

The issue before me on the tenant's application was whether the landlord used the rental unit for the stated purpose or whether extenuating circumstances prevented them from doing so.

As the landlord confirmed that they never moved into the rental unit and instead, advertised for new tenants for a higher monthly rent than the tenant was paying after making renovations, I find the rental unit was not used for the stated purpose. I therefore find the landlord must pay the tenant the amount of $15,300, the equivalent of 12 times the monthly rent at the end of the tenancy of $1,275.

I find the landlord failed to prove extenuating circumstances prevented them from using the rental unit for the stated purpose. The letter from the city was incomplete as there was no signature page and dealt with unauthorized construction and unauthorized suites. I do not find this letter required the landlord to end the tenancy by way of a 2 Month Notice, and the landlord has now subsequently made renovations and is currently renting out the rental unit.

For the above reasons, I find the landlord submitted insufficient evidence of extenuating circumstances.

I find the tenant is entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As a result, I grant the tenant a monetary award of $15,300, which is the equivalent of the monthly rent of $1,275 for 12 months.

Return of the security deposit

Section 38 of the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the deposit.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, must be given or served in the ways listed in this section of the Act. Text message communication is not an approved method of delivery of those documents under the Act.

For this reason, I find the tenant submitted insufficient evidence that the landlord was provided their written forwarding address as required by the Act. The landlord was not sure when the text message address was provided, and the tenant's text message giving an address was not dated.

The landlord was not obligated to return the security deposit or file an application for dispute resolution until the written forwarding address was served. The Act states that if the tenant does not provide their written forwarding address within 1 year after the end of the tenancy, the landlord may keep the security deposit. For this reason, as the tenancy ended on July 16, 2021, I **dismiss** the tenant's claim for the return of the security deposit, without leave to reapply.

The landlord may now keep the security deposit.

Landlord's application –

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 each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord 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 tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever 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.

In the matters before me, I find the landlord breached the Act before any alleged breach by the tenant. The landlord failed to conduct a move-in inspection with the tenant, make and complete a move-in condition inspection report (Report), and give the Report to tenant. Additionally, the landlord failed to comply with their obligation at the end of the tenancy to conduct an inspection with the tenant and make and complete a move-out Report.

For this reason and the lack of move-in photos, I find the landlord submitted insufficient evidence of the state of the rental unit at the beginning of the tenancy. I could not rely on the copies of the photos filed by the landlord as to the state of the rental unit at the end of the tenancy, as I find them blurry, grainy and undated.

Apart from that, the invoice provided by the landlord was dated April 11, 2022, 9 months after the end of the tenancy. The invoice clearly shows the expenses were for renovations and I further find that the costs claimed by the landlord were part of the renovations to the rental unit. I do not find the tenant is responsible for any part of the

installation of a hardwood floor, painting or resurfacing the cabinets as part of the renovations in the rental unit after a 13-year tenancy.

The landlord failed to submit a receipt or proof of payment for cleaning as proof of a cost.

For all these reasons, I find the landlord submitted insufficient evidence to support any part of their monetary claim. As a result, I **dismiss** the landlord's application, **without leave to reapply**.

Conclusion

As I grant the tenant a monetary award of $15,300 as noted above, I issue the tenant a monetary order (Order) of **$15,300**.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

The landlord may keep the tenant's security deposit for the reasons noted above.

The landlord's application is dismissed without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 28, 2023

Residential Tenancy Branch