



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: MNETC, FFT

Landlord: MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act; and,
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

This hearing also dealt with the Landlords' Application for Dispute Resolution for:

- a Monetary Order for compensation for damage caused by the Tenant, the Tenant's pet(s), and/or guests with a request to retain the Tenant's security and/or pet damage deposits;
- a Monetary Order for compensation for monetary loss or other money owed, with a request to retain the Tenant's security and/or pet damage deposits; and,
- authorization to recover the filing fee the application from the Tenant under section 72 of the Act.

Service of Notice of Dispute Resolution Hearing (Proceeding Package) and Evidence

The Tenant served the Landlord the proceeding package by registered mail on August 3, 2023. The Tenant submitted a completed proof of service form with Canada Post customer receipt confirming the date and providing the tracking number. The Tenant also submitted a proof of service to the Landlord for evidence she had submitted in support of her application. The Landlord A.T. confirmed receipt of the proceeding package and evidence prior to the hearing.

The Landlord served the Tenant the proceeding package and evidence on June 23, 2023 by registered mail. The Landlord submitted a completed proof of service form with Canada Post customer receipt confirming the date and providing the tracking number.

Neither party raised objection regarding service of the parties' proceeding package or evidence.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Is the Tenant entitled to a Monetary Order for compensation for the Landlord breaching the Tenant's entitlement to quiet enjoyment during the tenancy?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Is the Landlord entitled to a Monetary Order, with retention of the Tenant's security and pet damage deposits, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for their application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence was provided showing that this tenancy began on August 1, 2021 for a fixed term until July 31, 2022. Monthly rent was \$850.00 and the Tenant provided a security and pet damage deposits totaling \$850.00. The Landlord stated that these deposits had been returned to the Tenant when the Tenant moved out.

A. Prior Applications by the Parties and Settlement Agreement

The Landlord issued a Two Month Notice to End Tenancy for Landlord's use of the rental unit on May 16, 2022. The effective date of the Notice was July 31, 2022. A copy of the Notice was provided in evidence. The Landlord had also issued a One Month Notice on June 14, 2022 with an effective date of July 31, 2022. The grounds for the One Month Notice was a request by a governmental agency that the unit be vacated. The City where the rental unit was located had issued an order to the previous owner of the premises that the Tenant's suite was unauthorized under municipal by-laws and the Landlord was required to decommission its use. The City re-issued the order to the

Landlord on November 4, 2022 with a demand that the unit's decommission be completed and ready for inspection by January 31, 2023.

The Landlord had also issued a Two Month Notice to End Tenancy for landlord's parent's use of the rental unit. This Notice was issued on May 24, 2023 with an effective date of July 31, 2023. The difference with the Notice issued May 24, 2023, where she had checked off the purpose for the Notice, the Landlord included a handwritten notation providing "Reason #2" that the governmental agency had requested removal of the separate suite occupied by the Tenant. A copy of this Notice was submitted by the Landlord in evidence in support of their cross-application.

The Tenant filed applications for dispute resolution to cancel both the One Month Notice issued June 14, 2022 and the Two Month Notice issued May 16, 2022, as she took the position that the rental unit would not be used by the Landlord's parents but rather was to be converted into a vacation rental. The decommissioning of the rental unit would result in it made a part of the other remaining suite in the basement.

The Landlord cross-applied and requested enforcement of the Notices and an order of possession, denying that it would be used as a vacation rental. The Landlord also requested monetary compensation for alleged losses resulting from the Tenant not vacating the rental unit as provided in the tenancy agreement. As in the present case, the Landlord requested that they retain the Tenant's security and pet deposits as set-off against the claimed losses.

The parties' respective applications were heard by an arbitrator and in a Decision dated November 25, 2022, the parties Settlement Agreement was set forth. In relevant part, the Settlement Agreement provided:

- the parties mutually agreed to end the tenancy on January 31, 2023, and the Tenant and all occupants would vacate the unit by that time, the parties further agreeing to a move out inspection on January 31, 2023 or other date mutually agreed to by the parties;
- both the One Month and Two Month Notices were withdrawn and of no force or effect;
- that the parties agreed to withdraw their respective applications; and,
- that the Landlord, on proper notice to the Tenant, could make entry into the rental unit for purposes of working on the decommissioning of the unit.

B. Current Applications and Arbitration Hearing

The Tenant's current application seeks compensation of 12 months' rent alleging that the Landlord's parents did not move into the rental unit, the purpose of the Two Month Notice, and instead the rental unit (once decommissioned and reincorporated as living space with the remaining basement suite) was used as a vacation rental. The Tenant

submitted a copy of the Two Month Notice issued May 24, 2023, in support of this current application.

The Tenant also claimed the equivalent of 12 months' rent as compensation for the Landlord's alleged breach of the Tenant's entitlement to quiet enjoyment of the rental unit during the tenancy on the allegation that the Landlord conducted a vacation rental in the home. The Landlord testified that a portion of the home was a vacation rental in order to help defray costs of the home. The Landlord testified that the vacation rental of the home ended in August 2022. The Landlord also testified that, based upon a review of her records during the proceeding, that portion of the home was used as a vacation rental a total of approximately 43 days from January through August, 2022.

The Landlord's cross-application concerns damage alleged to have been committed by the Tenant. The alleged damage largely consisted of the removal of a ceiling fan in the bedroom, debris left in the yard, damage to an electrical switch, the general cleanliness of the kitchen and alleged damage to the yard caused by the dog. The Landlord submitted numerous photographs of the rental unit interior and yard depicting alleged damage to the unit caused by the Tenant. The Landlord submitted an invoice dated April 28, 2023 for repairs to the unit totaling \$6,300.00.

The Landlord also sought recovery of medical expenses due to her mother's allergy to the Tenant's dog, and compensation for paying rent due to the Tenant moving out after the term specified in the tenancy agreement. The Landlord submitted a copy of an emergency room physician's note confirming her mother's allergic reaction and copies of billing statements from the hospital for her mother's treatment.

During the hearing, Landlord A.T. testified that she had returned both the security and pet deposits to the Tenant at the time the Tenant moved out. Neither the Landlord nor the Tenant submitted a copy of the move-out condition inspection report which was to have occurred at the time the Tenant moved out, or a mutually agreed upon time, in accordance with the terms of the parties' Settlement Agreement.

Analysis

1. Tenant's Claim for Compensation for Landlord's Failure to Accomplish Purpose of Two Month Notice

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if 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 the rental unit is not used for that stated purpose for at least six months' duration.

In this case, the Settlement Agreement set forth in the prior arbitration Decision dated November 25, 2022, clearly provides that the parties mutually agree to end the tenancy, they each withdraw their respective applications, and most importantly, that “the Landlords agree, with the Tenant’s consent, that all notices to end tenancy issued to-date are withdrawn and of no force or effect.” *Decision, at Settlement Agreement at ¶12 (emphasis added)*. This includes the Two Month Notice issued May 16, 2022, the Two Month Notice issued May 24, 2022, as well as the One Month Notice issued June 14, 2022, as each of these had been submitted and were the premise for the parties’ respective applications.

I find that the Two Month Notice issued by the Landlord on May 16, 2022 and May 24, 2022, submitted by the Tenant in support of her application for compensation under section 51 of the Act had been withdrawn and of no force or effect in accordance with the Decision containing the parties’ Settlement Agreement entered into on November 25, 2022. There being no Notice issued by the Landlord under section 49 of the Act, and the parties having mutually agreed to end the tenancy (as set forth in the Settlement Agreement), I find the tenancy was not ended under section 49 of the Act, and therefore the Tenant is not entitled to compensation under section 51(2) of the Act.

2. Tenant’s Claim for Landlord’s Breach of Tenant’s Entitlement to Quiet Enjoyment during the Tenancy

Section 26 of the Act provides a tenant is entitled to quiet enjoyment, including but not limited to, the right to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord’s right of entry; and,
- use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 states: “A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises....Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.” Rather, “frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement of quiet enjoyment.” Any damages claimed for the breach may be made under section 67 of the Act. The Policy Guideline states: “In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.”

The Tenant testified that she was disturbed by vacation renters who partied or were loud but provided no further evidence that her entitlement to quiet enjoyment was

breached by the Landlord or evidence to support that compensation was the equivalent of 12 months rent.

The Tenant's testimony does not establish that any of the listed quiet enjoyment rights under section 26 were infringed by the Landlord. At most, any disturbance caused as a result of the vacation rental was temporary as the Landlord's testimony was that most of the rentals were for 2 to 5 days per month (with the exception July 2023 when the home had vacation renters for a total of 12 days). Furthermore, even if there was a violation, the Tenant provided no evidence to support her claim that it was the equivalent of 12 months' rent. I find that Tenant has not provided sufficient evidence to sustain her burden of proof that the Landlord breached the Tenant's entitlement to quiet enjoyment by renting out a portion of the home to vacationers.

3. Landlord's Application for Damages and Request to Retain Security and/or Pet Deposits

The Landlord's evidence establishes that the Tenant's security and pet damage deposits were returned to the Tenant on the day she moved out of the rental unit. The Landlord did not complete a move-out inspection report and submit it into evidence to establish the condition of the unit at that time. Consequently, the Landlord's right to request that she retain any or all of the security and/or pet damage deposits for alleged damage to the unit has been extinguished by the act of returning the deposits.

While the Landlord is not entitled to make a claim against the security or pet damage deposits, the Landlord retains the right to make a claim for damages to a rental unit under section 67 of the Act.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The claimant must provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove their entitlement to a claim for a monetary award.

In this case, the Landlord presented photographs of garbage in the yard, allegedly left by the Tenant when she moved out, as well as garbage left in the rental unit after the

Tenant moved out and the unclean condition of the kitchen sink, stove and refrigerator. The Landlord provided no further information other than the photographs and testimony as to the general condition. The Landlord did not provide evidence as to the actual amount required to compensate for the garbage clean-up. Similarly, the Landlord stated that the dog had damaged the yard, but again provided no specific amount in damages that could be compensated.

The Landlord did not submit a move-in condition inspection report in connection with her claim for damages, and no move-out condition inspection report was done by the parties, notwithstanding the provision in their Settlement Agreement. The Landlord did testify that the Tenant left the kitchen in a less than clean condition, and there were mouse droppings in the cabinet. The photographs submitted by the Landlord show that the droppings are not inside the cabinet but rather on the top of the cabinet structure, difficult to reach and not seen when standing in the kitchen. The Landlord stated that the Tenant allegedly removed and took a bathroom door, but offered no further evidence to establish that the Tenant removed the door and/or took the door, for what purpose or the value of the door. Similarly, there was no evidence other than the Landlord's statement that the ceiling fan was removed by the Tenant. As with the bathroom door, the Landlord did not provide any evidence as to the replacement cost for the ceiling fan. The Landlord claimed, without evidence, that the Tenant had damaged an electrical switch. There was no proof as to when the damage occurred, that the Tenant was responsible or her neglect resulted in the damage, or the cost of repair.

The Landlord did submit an invoice (or estimate) from a construction company that provides for renovation work to the unit. The invoice is dated April 28, 2023 and provides a general description of work (painting, plumbing, drywall and the like) with rounded-sums for each category of work (\$1,000; \$2,000; \$1,200 and similar) for a total of \$6,300.00. The Landlord offered no evidence that this work was done or that payment was made. More importantly, there is no break-down for those items of alleged damage the Landlord states the Tenant is responsible for reimbursement. I find the Landlord has not provided sufficient evidence to sustain her burden of proof for compensation by a balance of probabilities.

The Landlord also sought compensation in the amount of \$2,500.00 in rent charges they incurred due to the Tenant not vacating the rental unit as provided in the tenancy agreement. However, the Landlord could not move into the unit pending the hearing on the cancellation of the Notices that the Landlord issued prior to the stated end of the tenancy. I find the Landlord's claim for compensation for rent she incurred to a third party was not a damage or loss that arose due to the actions or neglect of the Tenant in violation of the Act, regulations or tenancy agreement.

Finally, the Landlord requested she receive compensation for her mother's medical expenses associated with an allergic reaction to the Tenant having had a dog in the unit. The Landlord knew, or should have known, that the Tenant had a dog in the rental

unit as the Landlord did, or should have, conducted a visual inspection of the property prior to purchase. Additionally, the Landlord was put on notice of the presence of a pet prior to purchase of the property as the Tenant had given a pet damage deposit at the start of her tenancy. I find the Landlord's claim for damages for her mother's medical bills is not a damage or loss that occurred due to the actions or neglect of the Tenant in violation of the Act, Regulation or tenancy agreement.

The Landlord has not submitted sufficient evidence to substantiate each of the items of damage for which she requests compensation under section 67 of the Act. Therefore, I find that the Landlord has failed to provide evidence sufficient to meet their onus to prove their claim for compensation, on a balance of probabilities.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

I dismiss the Landlord's application in its entirety, 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*.

Dated: October 16, 2023

Residential Tenancy Branch