Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC, FF
Tenant: MNDC, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and both tenants. Both parties, particularly the landlord provided substantial and detailed evidence and testimony. This decision records only relevant evidence that I have considered.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for stress and anxiety and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenants are entitled to a monetary order for compensation for the landlord ending the tenancy contrary to the Act, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 67, and 72 of the *Act.*

Background and Evidence

The parties agreed that on January 31, 2014 they signed a 1 year fixed term tenancy agreement to begin February 15, 2014 for a monthly rent of $1,700.00 due on the 1st of each month with a security deposit of $850.00 and a pet damage deposit of $200.00 paid.

The parties also agree that tenants did not move in to the rental unit and the landlord has returned both deposits and provided the tenants with an additional $200.00 for

costs the tenants may incur to change utilities and other services. The landlord submits that she was under no obligation to give the tenants any additional monies.

The parties also acknowledge that despite the start date of the tenancy being February 15, 2014 they had agreed to move in on a later date. However, the parties did not agree as to whether it would be February 16 or 17 2014.

The landlord submits that after further consideration she felt that the rental unit was not suitable for the tenants. She states that the tenants had been insistent on a long term tenancy. She states that she did not think it was fair to the tenants to have them move in and then, at the end of the fixed term, have them move out again.

However, the landlord decided, after the parties signed the agreement that she might want to move into the upstairs unit herself and have her daughter move into the basement unit at the end of the fixed term. She also thought she might want the unit for another family member.

The landlord also testified that she felt that the tenants who, in the landlord's opinion, were elderly and had significant health problems would be able to handle having stairs in the rental unit.

The landlord didn't think the unit was appropriate for these tenants for the above noted reasons and on February 11, 2014 the landlord wrote an email to the tenants that stated the following:

> "After discussing with my family, unfortunately having you and Alex moving in isnt going to be a good fit and I need to cancel the contract for the period Feb 15, 2014 to Feb 28, 2015, renting my upper suite at [sic].
>
> There is a good chance that my daughter and husband and I will take over both levels in about 1 years time and then we would need to displace you at that time, which is something that didn't come into my realm of possibility when we originally spoke on Jan 25 nor until recently, and I don't want you to have to go thru another move again, especially as the years go on, moving will only get more difficult."

The landlords email provided a number of links to various rental property sites and went on to say that this decision was inconvenient for both parties because she would lose out on some rent and utility monies and she would have to pay for a flight change for a

trip she was planning. The landlord also expressed her concern that she would have to do more advertising and showings so that she could rent the unit again.

The tenants submit that they tried to discuss the issue with the landlord both via email and by phone but the landlord stopped, for a time, returning their calls. The landlord explained her phone was not working for a few days.

The parties acknowledge that they did eventually communicate back and forth, specifically in regard to the return of the deposits the landlord had held. The landlord complained, for example, that the tenants didn't even give her 48 hours to return the deposits even though she is allowed 15 days to return deposits.

The landlord submits that as a result of the tenant's repeated harassment regarding the return of their deposits she suffered stress and anxiety and seeks $3,500.00 as compensation.

The tenants also submit that as a result of the landlord's premature cancellation of the fixed term of the tenancy agreement they suffered stress and anxiety and seek compensation in the amount of $3,500.00.

The landlord confirmed that she did re-rent the unit to other tenants effective March 1, 2014 for a 1 year fixed term.

Analysis

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

1. That a damage or loss exists;
2. That the 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.

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As the parties acknowledged that they had entered into a tenancy agreement on July 31, 2014 I find that both parties were bound by the *Act*, regulations and tenancy agreement after that date.

Section 44(1) stipulates that a tenancy ends only if one or more of the following applies:

a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    i. Section 45 (tenant's notice);
    ii. Section 46 (landlord's notice: non-payment of rent);
    iii. Section 47 (landlord's notice: cause);
    iv. Section 48 (landlord's notice: end of employment);
    v. Section 49 (landlord's notice: landlord's use of property);
    vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
    vii. Section 50 (tenant may end tenancy early);
b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
c) The landlord and tenant agree in writing to end the tenancy;
d) The tenant vacates or abandons the rental unit;
e) The tenancy agreement is frustrated; or
f) The director orders that the tenancy is ended.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement and if the tenancy agreement is for a fixed term not earlier than the date specified as the end of the tenancy if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

As such and from the evidence before me I find that the earliest the landlord could have ended the tenancy for the purposes stated in her February 11, 2014 email – that is for herself; her daughter; and her husband to take over the whole house for their own occupancy would have had to comply with the requirements under Section 49. As the parties had a tenancy agreement that would end February 28, 2015, I find the landlord had no authourity to end the tenancy for this purpose until February 28, 2015.

In addition, Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the landlord to be effective the notice must be in writing; be signed and dated by the

landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and be in the approved form.

If the landlord had used the approved form as is required under Section 52, the tenants would have been informed of their rights to dispute such a notice and may have applied to do so with the Residential Tenancy Branch.

Additionally, the approved form also informs tenants of their right to compensation from the landlord for receiving such a notice and for compensation in the amount equivalent to 2 months rent should the landlord fail to use the rental unit for the stated purpose, as required under Section 51 of the *Act.*

I find in essence the landlord's intent was to end the tenancy for her own use, and that after she did so she then re-rented it to another party and therefore did not use it for her stated purpose.

While the landlord did not issue a compliant notice under Section 49, I find that if she had issued one under these circumstances the tenants would have been entitled to compensation in the amount of $5,100.00 or 3 month's rent.

Residential Tenancy Policy Guideline #16 states an arbitrator may award aggravated damages as an award of compensatory damages for non-pecuniary losses. Non-pecuniary losses are considered to be intangible losses for physical inconvenience; discomfort; pain and suffering; grief; humiliation; loss of self-confidence; loss of amenities; and mental distress. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.

From the landlord's own testimony, I find that after making a contractual agreement and accepting the payment of deposits the landlord, with absolutely no regard for the impact it would have on the tenants immediate circumstances, "changed her mind". I find the landlord to be insincere in her position that she made these choices in the best interest of the tenants.

I also find that the landlord did not have the authourity to make decisions on the suitability of the unit on behalf of the tenants. That is to say, it was for the tenants to decide whether or not a 1 year term met their needs and whether or not any amount of stairs would be a problem.

For these reasons, I award the tenant's aggravated damages in the amount of $5,100.00 less the $200.00 already provided by the landlord.

As to the landlord's claim for $3,500.00 for stress and anxiety, I find, from the evidence and testimony before me, that any stress and anxiety for either party was brought on solely by the landlord's action of cancelling a 1 year fixed term tenancy within 4 days of the start date of the tenancy.

In fact, I find the only party who breached the *Act*, regulation or tenancy agreement was the landlord. There is no evidence before me that the tenants were in breach of the *Act*, regulation or tenancy agreement.

As such, I find the landlord's claim is frivolous, of no merit and an abuse of the dispute resolution process.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$4,950.00** comprised of $4,900.00 aggravated damages and the $50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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 22, 2014

Residential Tenancy Branch