Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF, O, OLC, SS

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent as well as damage or loss as a result of the tenancy pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; as well as an order for substituted service.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Issue: Time to File Dispute

The evidence of both parties is that this tenancy ended on June 30, 2013. The tenant filed her application for monetary compensation on June 30, 2015. The landlords filed their application for monetary compensation on November 30, 2015.

The *Act* provides the timeline within which an application for dispute resolution can be made,

> 60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

> (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
>
> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

I find that the tenant has filed her application within the 2 year timeline in accordance with section 60 of the *Act*. I find that the landlord's application was filed in accordance with section 60(3) of the *Act*, "after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded."

Given that this tenancy has come to an end and that both parties confirmed service of the other party's materials for this hearing, the tenant withdrew her application for substituted service as well as her application for an order requiring the landlord to comply with the *Act*.

Issue(s) to be Decided

Are the landlords entitled a monetary order for unpaid rent as well as damage or loss as a result of the tenancy?
Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of any monetary order?
Are the landlords entitled to recover the filing fee for this application?

Is the tenant entitled to a monetary order for compensation for damage or loss as a result of this tenancy?
Is the tenant entitled to obtain a return of all or a portion of her security deposit?

Background and Evidence

By way of background, this tenancy ended after a series of Residential Tenancy Branch ("RTB") dispute resolution hearings, reviews of those hearings and an application for Judicial Review of the last RTB decision dated February 11, 2013. Ultimately, the tenant was required to vacate the rental unit on June 30, 2013.

This tenancy began July 1, 2012 with a rental amount of $950.00 payable on the first of each month. The landlords confirmed that they continued to hold a security deposit paid by the tenant on June 28, 2012. The tenant testified that she did not provide a forwarding address to the landlords when the tenancy ended. She also testified that no joint move-out condition inspection was done and that no condition inspection report was provided to her at the end of the tenancy.

At this hearing, the landlords sought $14, 478.78 to compensate for 'defamation of character', assault and remuneration of legal fees related to the judicial review proceeding related to this tenancy. The tenant sought $9, 475.00 for harassment or 'noise pollution' as well as a rent reduction for over 6 months without heat in the rental unit. She also claims that the landlords did not follow through with their reason for the end of tenancy – that their daughter did not ultimately move into the rental unit as they claimed on the 2 Month Notice to End Tenancy and therefore the tenant claims she is entitled to double the amount of the rent pursuant to section 51 of the *Act*.

The tenant also testified that there was no heat in the rental unit for the final six and a half months of her tenancy. She submitted that the landlords wanted to force her to leave the rental unit. She testified that she phoned the landlords about the heat issue on several occasions and that sometimes she went to their door to complain. She produced no letters or other documentation to further evidence her complaints.

The tenant testified that she was harassed by the landlords, affecting her right to quiet enjoyment under the *Act*. She testified that the landlords lived upstairs and sometimes had many relatives in their home. She testified that there was approximately five people living upstairs at one time and it was very noisy, particularly at 5.30am. The tenant did not provide any documentary evidence that she complained about what she described as "noise pollution". The tenant did not provide any evidence of the "noise pollution".

The tenant testified that she was given a 2 Month Notice to End Tenancy for Landlord's Use. The reason provided was that their daughter was to move into the rental unit. Landlord BG testified that it was always their intention to have their daughter move in to the rental unit. The referred to the original 2 Month Notice issued as well as other documentary evidence submitted to show their correspondence with the tenant on this matter. Both landlords both testified that they were attempting to help their daughter financially by having her live in the rental unit. Both landlords testified that their daughter could not move in to the rental unit as a result of the timeline for the tenant's appeals regarding the 2 Month Notice.

Both parties agreed that, as a result of the tenant's application to cancel the 2 Month Notice, an RTB arbitrator issued an order of possession. The tenant made several requests for this decision to be reviewed for both accuracy and for an error in the decision itself. The tenant appealed, as is her right, both within the RTB and to the courts. The landlords testified that, once the appeal process was complete, it was no longer practical for their daughter and now their son in law to reside in the rental unit.

The landlords testified that, after review and court proceedings, the tenant did not vacate the unit until June 30, 2015. The landlords testified that, after addressing the dispute with the tenant, they sold the residential premises. The landlord's testified that they moved out in September 2015 and ultimately helped their daughter financially by selling the property.

The landlords both provided testimony denying any harassment of the tenant. They both testified that they were eager to have the tenant move out so that her daughter could move in and attempted (unsuccessfully) to negotiate a resolution of the end to tenancy. Landlord BG testified that he had never experienced the level of argument and disagreement with a tenant that he did with the tenant and applicant in this matter. He testified that she refused to cooperate or negotiate even with simple requests. He testified that on a request to park her car on the other side of the driveway, she attempted to drive her car into him. Witness letters were submitted with respect to this incident.

Landlord BO testified that the tenant was very aggressive and angry in her communication with the landlords. She also testified that both herself and Landlord GB were very offended by the nature of the description of the landlords in both RTB and court materials. She testified that the tenant refused to meet any request of the landlords from moving her vehicle to the tenant area of the driveway to agreeing to a date to participate in the condition inspection at the end of tenancy.

Landlord BG testified that the security deposit was retained and not returned because the tenant did not provide a forwarding address. He testified that he believes the landlords should be able to retain a portion of the security deposit towards a monetary order because the tenant's car leaked, damaging the residential property driveway at the front of the house.

Both landlords testified that, before the tenant moved into the rental unit the landlords had just purchased the home. Landlord BG testified that the residential premises had been newly remodelled and there were no issues with the provision of heat or any other amenity within the rental unit.

Analysis

Both parties applied pursuant to section 67 for a monetary order for damage or loss to the party as a result of this tenancy. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant claims that she is entitled to be compensated in the form of a rent reduction for six and half months of her tenancy because she testified that the heat (as well as other building deficiencies that she discussed only in her written submissions for this hearing) did not function in her unit. Beyond her testimony, disputed by the landlords, the tenant produced no proof to support her claim that there was a lack of heat in the rental unit. The tenant did not provide copies of any letters to the landlord nor did the tenant submit an application for dispute resolution to address this concern. Further, the tenant did not provide details in her testimony as to this lack of heat or how she dealt with it over the six months. Therefore, I find that tenant has not proved the existence of any damage or loss: any lack of heat or consequences of a lack of heat or any other deficiencies in the rental unit. I find that any reasonable person without heat in their rental unit for several months would have made complaints in a variety of manners and provided documentation and evidence to support such a claim. I dismiss this portion of the tenant's claim.

The tenant claims that the landlords harassed her. She claims that the landlords lived upstairs and were noisy, with too many residents in their home. Again, the tenant provided no evidence to support her claim. The tenant did not submit letters to indicate that she had formally complained to the landlord. Furthermore, while the tenant is entitled to lack of quiet enjoyment of her unit, the landlords are also entitled to reside and perform daily activities within their unit. The tenant's description of the "noise pollution" or harassment has not shown that any unreasonable disturbance was created by the landlords and their family. Therefore, I find that that tenant has not proved the existence of any loss of quiet enjoyment that stems from some noisy behavior by the landlords. I dismiss this portion of the tenant's claim.

The tenant claims that the landlord did not ultimately use the house as identified in their 2 Month Notice to End Tenancy. With respect to a notice for landlord's use, the *Act* states,

> **49** (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

And that

> **51** (2) In addition to the amount payable under subsection (1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
>
> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find, based on the testimony of all parties (tenant and both landlords) that the landlords issued their notice to end tenancy with the intention of having their daughter move in to the rental unit. I also find that, due to the length of the proceedings following the issuance of this notice to end tenancy, the landlord's original intention became frustrated. The landlords were unable to move forward given the tenant's appeal of the issuance of an Order of Possession. The reasonable time period within which the landlords may have acted to move their daughter in was severely lengthened by the process to address tenant's appeals. Within that period of time, the landlords and their daughter reasonably chose another course of action. The landlords testified that, beyond the timeline itself, they were not assured of the outcome of the proceedings in court and so chose to make alternative plans. Given all of the exceptional circumstances related to the end of this tenancy, I find that the landlords were not in a position to comply strictly with section 51 of the *Act*. I do not find that the tenant is entitled to recover an amount equivalent to double the monthly rent of her tenancy in these specific circumstances. I dismiss this portion of the tenant's application.

I note that, with respect to the entirety of the tenants' claim, I find that both landlords' testimony was credible and believable. The landlords sought that the tenant should compensate them for their legal costs. I do not have jurisdiction to address court costs.

The landlords claimed $1000.00 for "defamation of character". I do not have jurisdiction to address such a claim as defamation of character.

Landlord BG claimed that he should be compensated for the assault with vehicle by the tenant in his driveway. No evidence was provided regarding this incident beyond the testimony of Landlord BG and some witness statements. The tenant denied this incident. I do not find that this is the appropriate venue to address an allegation of assault: I do not have jurisdiction to consider this claim.

With respect to the tenant's application and based on all of the materials submitted and testimony provided, I find there is unsufficient evidence to support these claims and I dismiss the tenant's application in its entirety.

Under the circumstances described by the landlords, based on the evidence before me, I find that I do not have jurisdiction under the *Act* to address the landlord's application. I decline jurisdiction to render a decision with respect to the landlord's application.

Given that neither party has been successful in their applications, I find that both parties are responsible for the cost of filing their own applications.

Conclusion

I decline jurisdiction to consider the landlord's application.
I dismiss the tenant'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: December 30, 2015

Residential Tenancy Branch