



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act* regulation and for return of all or part of the pet damage deposit or security deposit.

The tenant and the landlord attended the call, during which the parties agreed to add another respondent landlord to the Style of Cause, who was present and had been served with the tenant's amended application and consented to the amendment. The Style of Cause on the frontal page of this Decision reflects that amendment. The other respondent landlord did not remain in attendance for the entire hearing, and another person attended the hearing as agent for the landlords.

The tenant, the remaining landlord and the landlords' agent each gave affirmed testimony, and the tenant called 2 witnesses who gave independent affirmed testimony. The parties were given the opportunity to question each other and the witnesses. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation under Section 52 of the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this fixed term tenancy began on September 1, 2003 and reverted to a month-to-month tenancy after the first year. The tenant moved out in October, 2015. Rent in the amount of \$840.50 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$350.00, of which \$300.00 was returned. A previous hearing resulted in an order that the landlords retain \$50.00 of the security deposit.

The tenant further testified that the landlords had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated June 24, 2015 and contains an effective date of vacancy of September 1, 2015. The reasons for issuing it are:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse;
- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The tenant disputed the notice and the parties attended a hearing. A copy of the resulting Decision has been provided and it is dated June 9, 2015. It concludes that the landlord named in the tenancy agreement is not the landlord who issued the notice to end the tenancy, and the 2 Month Notice to End Tenancy for Landlord's Use of Property was cancelled.

The landlords then served the tenants with another 2 Month Notice to End Tenancy for Landlord's Use of Property on August 4, 2015, a copy of which has also been provided. It is a copy of the first notice issued, marked, "Amended Aug 4 2015," and signed by 2 landlords. The effective date of vacancy remains the same, as do the reasons for issuing it. The tenant testified that he disputed it and the parties attended another hearing on September 17, 2015. The tenant had found another place to live and agreed to move out October 1, 2015, and was ordered to repay the landlord's \$50.00 filing fee out of the security deposit.

The tenant is elderly and ill, and broke his foot which made it very difficult to move. Throughout the entire process, the tenant was told that the landlord was moving in, but still hasn't. A relative of the landlord whom they said was homeless was also supposed to move in, but the landlords made other arrangements for that person. No one is there.

The tenant claims double the monthly rent, moving expenses in the amount of \$430.00, and reimbursement of the \$50.00 that the landlord was ordered to retain from the security deposit at the last hearing, for a total of \$2,181.00.

The tenant's first witness (HW) testified that he resides directly across the street from the rental unit. People have come and go for weekends or a few days only since the tenant moved out. Some renovations or clean-up has been done, but only one person at a time for about a week. No one has permanently lived there. The witness is home all evening, and has not been away other than a few days all summer, and has seen no cars and no activity at the rental unit.

The witness also testified that at the time of the move, the tenant had just been released from hospital after suffering a heart attack.

The tenant's second witness (WM) testified that she is a close friend and caregiver of the tenant and travels past the rental unit pretty much every day at various times except Sundays. Since the tenant moved out, the witness has seen a vehicle and signs that people were there on rare occasions.

The tenant needed care at the time of move-out due to his poor health and couldn't do much at all for quite awhile. The witness is aware that the tenant paid people he hired who had a truck to assist with the move, and friends.

The landlord's agent (GVT) testified that the first notice to end the tenancy was cancelled at arbitration because the signature of the landlord on the notice differed from that on the tenancy agreement. The landlords served another with the corrected name of the landlord and the tenant disputed it as well. The Arbitrator found in favour of the landlords and basically asked the tenant how much rent he had paid. The tenant stated that he had paid rent for October, and the rent and security deposit were returned to the tenant. The tenant moved out on October 1, 2015 and the landlords thought all obligations with the tenant were done.

The landlords got contractors and cleaners, who quit because of the difficult work. The landlords spent another 4 or 5 days cleaning walls and painting. The landlords have cable, internet, hydro, and are occupying the rental unit every month for at least a week since April, 2016. The landlords have not resided there full time.

The landlord (IVT) testified that the landlords couldn't stay in the rental unit after the tenant moved out due to allergies. The tenant is a heavy smoker and it was impossible to stay there until it was all cleaned up.

There are 3 owners and all come and go. The rental unit was finished with cleaning and painting in April, 2016, but the landlords never told the tenant they would be living there full time. They have been there quite consistently as well as a few other people going in and out. The landlord's sister was originally going to move in but had to make alternate plans.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

I have read the 2 previous Decisions, and the September 17, 2015 Decision mentioned by the parties is actually dated September 16, 2015. It was a hearing concerning applications by both parties respecting the 2 Month Notice to End Tenancy for Landlord's Use of Property. The Arbitrator found that the landlords intended in good faith to occupy the rental unit, and the tenant's application to cancel the notice was dismissed. The landlords were ordered to recover the filing fee.

The *Residential Tenancy Act* does not permit a landlord to issue a notice to end a tenancy for landlord's use of property unless the landlord intends in good faith to do what is set out in the notice. In this case, the 2 Month Notice to End Tenancy for Cause states that the landlord intends in good faith to occupy the rental unit and the landlords were successful in convincing the Arbitrator that they intended in good faith to occupy it.. However, the landlords have not occupied the rental unit within a reasonable time after giving the notice. It is not sufficient to occupy the rental unit occasionally. One of the landlords testified that the rental unit required a lot of work due to the tenant's smoking in the rental unit for so many years, and that the work was completed in April, 2016. The relevance of the landlords' testimony respecting the work required painting goes to the reasonableness of the timing for the landlords to occupy the rental unit. However, I do not accept that 6 months beyond the date the cleaning and painting was finished before moving in is reasonable. It is now October, 2016 and the landlords have not taken steps to move into the rental unit.

Where a landlord does not take steps to do what is set out in the notice ending the tenancy within a reasonable time, the *Act* specifies that the tenant is entitled to compensation under Section 51(2) below:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (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.

(Underlining added.)

The tenant claims double the monthly rent, pursuant to Section 51(2) (a), and I find that the tenant has established the claim in the amount of \$1,681.00.

The tenant also claims moving expenses. The tenant testified that the landlord reimbursed the tenant the rent paid for October 1, 2015, and the landlord's agent testified that it was returned as well as the security deposit. The parties agree that the tenant moved out on October 1, 2015, and the 2 Month Notice to End Tenancy for Landlord's Use of Property contains an effective date of vacancy of September 30, 2015. The *Act* requires a landlord who issues such a notice to provide to the tenant compensation equivalent to one month's rent on or before the end of the tenancy, as set out in Section 51(1) above. That is usually accomplished by not charging the tenant rent for the last month of the tenancy, which in this case is September, 2015. The landlords have not reimbursed that month of rent. Such payment is deemed to be moving expenses, and I find that the tenant has established a claim in the amount of \$840.50.

With respect to the tenant's claim for return of a filing fee previously awarded, that matter has already been adjudicated upon, and I dismiss that portion of the tenant's application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,521.50.

This order is final and binding and may be enforced.

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 28, 2016

Residential Tenancy Branch