Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit 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 her filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 22, 2016. The tenants confirmed receipt of the package in this matter as claimed by the landlord. The tenants stated that the landlord was served with the notice of hearing

package and the submitted documentary evidence via Canada Post Registered Mail on September 13, 2016. The landlord confirmed receipt of these packages as claimed by the tenants. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

The tenants confirmed at the outset that their selection to obtain an order cancelling the notice to end tenancy for landlord's use was made in error and as such was withdrawn as the tenancy has already ended. The landlord confirmed that the tenancy had ended and that possession was not an issue. As such no further action regarding this portion of the tenant's application is required.

Preliminary Issue(s)

At the outset, the landlord had made a request to re-schedule the hearing in a face to face hearing format based upon two reasons. The landlord states that the she has an important witness who is not available on the scheduled hearing date due to being at work on a location movie shoot. The same witness's English is a second language and that the witnesses' evidence would be better given in person. The tenants dispute the landlord's request. Both parties clarified that the applications filed by each were for strictly monetary claims. The tenants confirmed that their selection to obtain an order to cancel the notice to end tenancy for landlord's use of property and for an order for the landlord to comply with the Act, Regulations or tenancy agreement were made in error and as such is withdrawn by the tenants as the tenancy has already ended.

The hearing was reconvened on November 22, 2016 at 10:30am in which both parties attended in person. At the outset, the landlord made a second adjournment request due to retaining counsel who was not available. The tenant had disputed the adjournment request stating that they just wished to have the matter dealt with and were ready to proceed. The landlord has stated that it is her right to be represented by counsel and also that she has not yet had an opportunity to review the tenant's evidence with her counsel. The landlord stated that due to an error by her counsel a scheduling conflict has prevented him from appearing with her because he was committed to marking examinations. The landlord also stated that due to her laptop being out for repairs, she was unable to review the tenants' digital evidence.

In considering the landlord's second request for an adjournment, I found that these matters dealt with monetary claims and that neither party would be prejudiced by a second adjournment. The landlord's adjournment request is granted.

The hearing was reconvened on January 12, 2017 with both parties. The landlord and her counsel (the landlord) attended, made submissions and provided evidence. The tenants both attended, made submissions and provided evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?
Are the tenants entitled to a monetary order for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 1, 2010 on a fixed term tenancy ending on November 30, 2011 as shown by the submitted copy of the signed tenancy agreement dated November 18, 2010. Both parties confirmed that "Extensions" to the tenancy were made where both parties consented to a 1 year fixed term tenancy on at least 5 occasions between December 1, 2010 and February 29, 2016. At the beginning of the tenancy the monthly rent was $1,325.00 payable on the 1st day of each month. A security deposit of $662.50 and a pet damage deposit of $662.50 were paid on November 18, 2010. A condition inspection report for the move-in was completed on December 1, 2010. No condition inspection report for the move-out was completed.

The landlord seeks a monetary claim of 5,000.00 which consists of:

$320.32	Repair Kitchen Cabinet
$24.68	Replace Halogen lightbulbs (3)
$399.00	Various Repairs and Labor -Remove/Replace Track Lighting -Sand/Repair Baseboards/Sills -Touch up Vanity Doors -Repair Closet Doors -Repair Blinds/Window Latches -Replace Halogen Bulbs -Remove/Replace Kitchen Cabinet Doors

	-Remove/Dispose Storage Unit from Hallway
	-Shop Supplies $20.00
$83.41	New Track Lighting Unit
$630.00	**Painting/ Stain damaged walls/baseboards**

The landlord clarified that the remaining ~~$4,172.59~~ **$3,542.59** in claim was for the diminished value of the rental property as it was sold.

The landlord stated that after the tenants had vacated the rental unit it was discovered by the landlords that the rental premises was left damaged. The tenants disputed these claims.

The landlord provided affirmed testimony that the tenants left the kitchen cabinets damaged requiring a repair cost of $320.32 based upon the submitted invoice. The landlord submitted photographs of the kitchen cabinet doors which showed damaged cabinet door faces. The landlord stated that this was due to some sort of water/moisture damage over time. The tenants disputed this claim stating that the damage was due to normal wear and tear.

The landlord seeks $24.68 for the replacement of 3 halogen bulbs which were burnt out. The landlord also stated that there was 1 missing globe light cover from the living room lights. The landlord submitted a copy of the invoice for $24.68. The tenant disputed that there was only 1 burnt out lightbulb. The landlord refers to the incomplete condition inspection report and the submitted photographs in support of the claim.

The landlord seeks an $85.41 claim for a missing globe light fixture. The landlord stated that as this light fixture was old she was unable to replace the 1 missing globe and had to replace the entire 3 globe light fixture. The tenants disputed this claim stating that the light fixture only had 2 globes and not 3. The tenants referred to their submitted photographs which clearly show a 2 light fixture. I note that the condition inspection report for move-in fails to identify the lighting fixtures in the living room and disclose the type or number of light fixtures in the living room.

The landlord seeks a claim of $399.00 for various repairs to replace track lighting in living room, sand/repair baseboards and sills, touch up paint the vanity doors, repair closet doors, repair blinds/window latches, labor for replacing halogen bulbs, replace kitchen cabinet doors and dispose of storage unit in hallway. The tenants dispute this claim stating that the storage unit in the hallway was given to the neighbor several months earlier and that it was painted black by the neighbor. The tenants also stated that the damage to the various items noted were due to normal wear and tear.

The landlord's witness (P.M. a contractor) provided undisputed affirmed testimony that the rental premise was previously renovated in 2008 by him in which a new kitchen was installed for an estimated cost of $40,000. The witness stated that he had attended the rental premises at the request of the landlord and that he viewed in his opinion water damage to the kitchen cabinets. The witness clarified that this damaged was for moisture over a period of time which caused the damage to the cabinets. The witness provided undisputed affirmed testimony that he viewed damage to the floors in the sunroom which he believes was caused by moisture from the plants when he viewed it on April 4, 2016. The witness also stated that he viewed cabinet damage near the sink for which he took photographs to document. The witness noted that the lacquer on the cabinets was peeling off. The witness also noted damaged and "chipped" baseboards and a damaged window sill in the sunroom. The witness stated that he had previous inspected the sunroom noting that there was angled grading away and that the skylight was previously replaced and the ceiling re-insulated. The witness provided his opinion that the likely source of the moisture issues was because of the tenants "watering the plants" and not due to any water leaks.

In support of this claim the landlord has submitted Invoices and receipts for all costs incurred for repairs and 17 photographs showing the condition of the rental at the end of tenancy.

The landlord also seeks compensation for the diminished value of the property as it was sold with deficiencies that were not repaired prior to the sale. The landlord noted those deficiencies as all flooring throughout the rental premises, a stain on the granite countertops which caused the landlord to sell the property with a lower price of between $5,000.00 -10,000.00. The tenants disputed this claim stating that there was no stain to the countertop or flooring. The tenants also argued that the landlord has failed to provide any evidence of a loss in the sale price due to any deficiencies.

The tenants applied for:

$100.00	Recovery of the Filing Fee
$662.50	Return of the Security Deposit
$662.50	Return of the Pet Damage Deposit
$1,191.67	Compensation for complying with a 2 Month Notice, less 4 days prorated
$662.50	Compensation under Section 38(6), Security Deposit
$662.50	Compensation under Section 38(6), Pet Damage Deposit

$1,191.67	Compensation, Penalty for failing to comply with 2 Month Notice
$10,000.00	Compensation, Coercion and loss of quiet enjoyment

The tenants seek the return of double the $662.50 security deposit and the $662.50 pet damage deposit as the landlord has failed to return both deposits.

The tenants also seek compensation of $10,000.00 for the loss of quiet enjoyment as the landlord on a number of occasions failed to provide 24 hours' notice to enter the premises and in fact on those occasions the landlord displayed a combative behavior. The tenants stated that the landlord provided the rental premises to the tenants which included the deck area and then later told them that this was a common area and not for their exclusive use. The tenants stated that the landlord failed to provide 24 hours' notice for the landlord's handymen to enter this area. The landlord disputes this claim stating that a minimum 24 hours' notice as always given to the tenants and if not at least a request was made for the landlord or her agents to attend the rental premises to make repairs. The landlord admitted that she was brisk and very direct with the tenants. The landlord noted that the deck area was considered by the strata as a common area and that this was not for the exclusive use of the tenants. The landlord also stated that the "handymen" in question were agents of the strata and not the landlord who would attend to inspect the common area deck. The landlord clarified that upon occasion when she was notified by the strata, the landlord would try to help facilitate access by notifying the tenants of the strata's efforts to inspect and access the common area deck.

Analysis

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.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants regarding the landlord's monetary claims. The landlord has provided a copy of the condition inspection report for the move-in that was completed by both parties to show a comparison of the rental unit between the beginning of the tenancy and at the end of tenancy through the landlord's

submitted photographs and the undisputed testimony of the landlord's contractor who witnessed the condition of the rental at the end of tenancy. This witness also provided testimony to support the condition of the rental unit at the beginning of the tenancy as he was the contractor who performed the renovation work. The landlord has also provided copies of the invoices/receipts for the repair of the damages. On this basis, I find that the landlord has established a claim for compensation of ~~$827.41~~**$1,457.41**. However, I note that the landlord failed to provide sufficient evidence regarding the storage unit left in the hallway. The tenant provided undisputed evidence that the storage unit was given to the neighbor, which was left in the hallway and painted black by the neighbor several months earlier. I note that the landlord's invoice fails to identify how much the cost of disposing of the storage unit may be. I find that the landlord has failed to establish a claim on this portion of the claim. I grant a nominal credit to the tenants in the amount of $30.00. As such, I find that the landlord has established a claim of ~~$797.41~~**$1,427.41**.

I find that the landlord failed to provide sufficient evidence of diminished value regarding the sale of the rental property. Although the landlord noted various items of deficiencies that the landlord claims that the tenant was responsible for, I note that the landlord has not applied for compensation for any such noted deficiencies and has not provided sufficient evidence to show that the sale price of the rental premises was impacted by the amount claimed of ~~$4,172.59~~**$3,542.59**. In fact the landlord admitted that the final sale price was subject to the normal negotiation process. As such, this portion of the landlord's claim is dismissed.

As for the tenants claims regarding the return of double the $662.50 security and the $662.50 pet damage deposits, ssection 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended and that the landlord received the tenants forwarding address in writing on April 4, 2016. The landlord had applied for dispute against the return of the combined deposits on April 18, 2016, making it 14 days. I find that the landlord has complied with the Act by properly applying for dispute against the security and pet damage deposits for damages. I find that the tenants claim for return of double the security and pet damage deposits are dismissed.

On the tenants claim for compensation for $10,000.00 regarding the loss of quiet enjoyment, I find that the tenants have failed. Although the tenants have claimed that the landlord was rude and abusive, the tenants stated that the $10,000.00 amount claimed was an arbitrary amount not based upon any actual losses or expenses incurred because of the landlord's actions. I note that the tenants have provided details regarding the deck area in which they claim that the landlord caused the loss of quiet enjoyment regarding a dinner party. The tenants have argued that the deck area was for their exclusive use. The landlord has argued that this deck area constituted as a common area as per the strata. I also note that the landlord admitted to being a brisk and direct person, but that these details fall short of the test of the landlord causing a loss of quiet enjoyment and was instead a minor inconvenience as the tenants confirmed in their direct testimony that they were still able to continue with their dinner party. As such, this portion of the tenants claim is dismissed for insufficient evidence of a loss of quiet enjoyment.

I find that the tenants have established an entitlement for the claim of $1,191.67 as the landlord has confirmed that no compensation was provided to the tenants after they complied with the 2 Month Notice that was served upon them by vacating the rental unit. **Section 51 (1) of the Act states that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equivalent to one month's rent. As such, the tenants' claim for a pro-rated amount of $1,191.67 for one months's rent has been established as both parties confirmed that the landlord served the tenants with the 2 Month Notice. Compensation under this section is not provisional whether a tenant pays rent or not. However, during the hearing both parties confirmed no rent was paid for April 2016 rent and that during the hearing the tenants acknowledged that these two claims would cancel each other out. As such, I offset this portion of the tenant's claim against the landlord's issue of unpaid rent. No monetary award is granted to the tenant.**

As for the tenants claim for compensation of $1,191.67 as the landlord failed to follow through on the reasons for the 2 Month Notice to occupy the rental premises, I find that the tenants have established a claim. Both parties confirmed that the landlord served the tenants with the 2 Months' Notice. Both parties confirmed that the reason stated on the notice was for landlord's use to occupy the premises. The landlord confirmed because of personal issues that the rental premises was not occupied by her, but was instead sold. Section 51(2)(b) of the Act sets out that where a rental unit is not used for the stated purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy. Based upon the undisputed affirmed evidence of both parties, I find that the tenants have established a claim as the landlord has failed to use the rental premises as stated on the 2 Month Notice. Although the

tenants have applied for $1,191.67, the Act is clear in that the landlord must pay the tenants double the rent payable under the tenancy agreement which is $2,650.00 (Monthly Rent $1,325.00 X 2).

The landlord has established a monetary claim of ~~$797.41~~**$1,427.41**. The tenants have established a monetary claim of ~~$5,166.67~~**$2,650.00**. As both parties have been successful in their applications, I decline to make any orders regarding recovery of their respective filing fees. In offsetting these claims, I grant the tenants a monetary order for ~~$4,369.26~~**$1,222.59**.

Conclusion

The tenants are granted a monetary order for ~~$4,369.26~~**$1,222.59**.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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: February 12, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON April 4, 2017 AT THE PLACES INDICATED IN **BOLD**.