



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNDC, FF, MNSD
MT, CNL, CNR, LRE, MNDC, MNSD, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning amended applications made by the landlord and by the tenants. The landlord has applied for:

- an Order of Possession for landlord's use of property;
- a monetary order for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenants for the cost of the application.

The landlord has also provided a Monetary Order Worksheet setting out cost of repairing damage, cleaning costs and a claim to keep all or part of the deposits.

The tenants have applied for

- more time than prescribed to dispute a notice to end the tenancy;;
- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the landlord advised that having no address for service of the tenants, the landlord was unable to provide copies of photographs that were submitted as evidence for this hearing. The landlord did not provide the photographs as evidence within the time required under the Rules of Procedure, and given that the tenants have no access to them, I decline to consider them. No other issues with respect to service or delivery of documents or evidence were raised, and all other evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, the parties agreed that the tenants have vacated the rental unit, and the tenants withdraw the applications for more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for landlord's use of property; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for an order limiting or setting conditions on the landlord's right to enter the rental unit. Similarly, the application of the landlord for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of renting another unit beyond the effective date of a 2 Month Notice to End Tenancy for Landlord's Use of Property?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for serving a 2 Month Notice to End Tenancy for Landlord's Use of Property, costs of painting and repairs, and for loss of quiet enjoyment?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2013 and expired on May 31, 2014 thereafter reverting to a month-to-month tenancy. Rent in the amount of \$2,000.00 per month was originally payable under the tenancy agreement and was raised to \$2,109.45 effective May, 2016. Rent is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00 as well as a \$100.00 deposit for 2 key fobs, both of which are still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium suite, and a copy of the tenancy agreement has been provided for this hearing. The tenant further testified that the tenants vacated the rental unit on August 31, 2017 and returned both key fobs, but the landlord has not returned the \$100.00 deposit.

On April 29, 2017 the landlord texted the tenant saying that she had to move into the rental unit and asked the tenants to move out by the end of May. The tenant advised that the landlord had to follow the rules, and the landlord emailed a notice to end the tenancy. The tenant told the landlord a physical copy was necessary. The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by courier on May 1, 2017. A copy has been provided for this hearing which is dated April 29, 2017 and contains an effective date of vacancy of June 30, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

On May 26, 2017 the landlord called the tenants to see if they had found a place to live and asked the tenants to do her a favour by moving out by the end of June. The tenants told the landlord that the dates and postal code on the notice to end the tenancy were wrong, but the tenants would try to find a place by the end of June. On June 17 the landlord called again saying she had booked the elevator for a move-out on June 30, but the tenants advised they hadn't found a place. The landlord told the tenants to stop playing games and gave a 40 minute lecture, saying she had to move in at the end of June and she would email listings, but not to be picky.

On June 23 the tenants emailed the landlord saying they had not found a place but were trying, and the landlord posted another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as well as a notice to inspect. The landlord then inspected the next day, asked the tenants to re-paint and yelled at them about the cupboards. The landlord had also previously accused the tenants of having a cat in an email, which the tenants deny.

The tenants had to make a quick decision to move and didn't get a tenancy they wanted and now have to pay \$2,400.00 per month.

The tenants filed the application for dispute resolution disputing the 2 Month Notice to End Tenancy for Landlord's Use of Property on June 26, 2017. The tenant had asked the landlord to serve one that had correct dates and postal code, and when the landlord didn't do so, the tenant thought the landlord had changed her mind.

On August 2, 2017 the tenants emailed the landlord notifying the landlord that the tenants would vacate by the end of August. The same night, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and another notice to enter.

No move-in condition inspection report had been completed at the beginning of the tenancy and the landlord arranged for a move-out condition inspection but the tenant was advised by a friend that since none was done at move-in, there was no point in doing one at move-out. The tenants have not provided the landlord with a forwarding address in writing.

The tenants paid rent to the end of the tenancy, and claim the equivalent of 1 month's rent as compensation, or \$2,109.45, as well as \$2,250.00 for loss of quiet enjoyment due to the landlord's constant harassment, \$100.00 for the key fob deposit, \$1,000.00 for recovery of the security deposit, \$250.00 for labor and materials to repair closets, and \$500.00 for painting the rental unit, for a total of \$6,209.45.

With respect to the landlord's claim, the tenant testified that the rental unit was not professionally cleaned at the beginning of the tenancy. Shelving in closets were all broken and the tenants had to build their own. Windows, walls and the balcony all needed cleaning as well as the appliances. Counters in the kitchen were stained and damaged, and concerns raised with the landlord were refused. The tenants painted 2 walls, one in a pale blue in a bedroom and a yellow wall in the hallway. An Ikea closet had been modified to a computer workstation, but it wasn't stable, and the tenants explained that to the landlord.

The landlord testified that she realized the errors in the 2 Month Notice to End Tenancy for Landlord's Use of Property but cannot understand how a 2 month notice could turn into 4 months and expected the tenants to move out at the end of July. The landlord claims \$2,100.00 for having to pay rent for the month of September, 2017 in another rental unit after the tenants had been given notice to vacate, and testified that the \$1,800.00 claim in the landlord's Monetary Order Worksheet is incorrect because the landlord was in a hurry. Copies of letters exchanged between the landlord and her landlord have been provided as evidence for this hearing.

The landlord made 2 phone calls to the tenants; one in April to see if it was possible for them to move out early and then in June to see if they found a place. There were only 2 emails sent to the tenants, and the landlord had no other way to reach them. The landlord hadn't inspected for 4 years and when she did, she told the tenants they weren't permitted to make changes without notifying the landlord and the tenant started to yell at the landlord. After 3 minutes the landlord left; the tenant's behaviour toward the landlord was aggressive, and now the tenants claim harassment.

The landlord also testified that she offered the tenants a free month of rent.

The tenants also left the key fobs at the concierge of the strata complex and the landlord intended to give the deposit back when the parties completed the move-out condition inspection report but the tenants didn't show up.

The landlord's Monetary Order Worksheet also claims \$3,600.00 for changing carpet and hardwood floors, which the landlord withdraws. However, the landlord claims \$1,600.00 for a damaged closet, \$1,000.00 for repainting after the tenants vacated, and \$356.00 for cleaning the rental unit.

The landlord testified that the tenants removed an Ikea closet, which was stable and useful and was only 6 or 7 months old at the beginning of the tenancy. The tenants had no right to remove it, and a copy of proof of its cost has been provided as evidence for this hearing. The tenants painted without the landlord's approval and did a poor job. The landlord also denies that the rental unit wasn't clean at the beginning of the tenancy and testified that the tenants did not leave the rental unit reasonably clean at the end of the tenancy. The landlord called a cleaning company who advised that \$356.00 is what they would charge.

Analysis

The *Residential Tenancy Act* states that a landlord or a tenant must give notice to end a tenancy the day before rent is payable under the tenancy agreement. A 2 Month Notice to End Tenancy for Landlord's Use of Property must be effective no sooner than 2 months after the end of the month it was served if rent is payable on the 1st of the month. In this case, I accept the undisputed testimony of the tenant that it was served on May 1, 2017, and it contains an effective date of vacancy of June 30, 2017. The *Act* also provides that where the effective date of vacancy is incorrect, it does not invalidate the notice, but states that it is corrected to the nearest date that complies with the law, which in this case is July 31, 2017.

The tenants disputed the notice, but not within the 15 days as required. The ground upon which a tenant can dispute such a notice if the tenancy is on a month-to-month basis is good faith. The tenants didn't raise any issue with respect to the landlord's good faith intent to use the rental unit for the purpose contained in the notice, and therefore, I find that the tenants over-held occupancy beyond the date they were entitled to. The landlord has suffered a loss as a result having to pay rent in another rental unit for August and September. The tenants paid the landlord rent to the end of August, and I find that the landlord has established a claim of \$2,100.00 for September.

Where a landlord gives a 2 Month Notice to End Tenancy for Landlord's Use of Property, the *Residential Tenancy Act* requires the landlord to reimburse the tenant the equivalent of 1 month's rent, which is usually accomplished by not charging rent for the last month of the tenancy. I am satisfied that the tenants have established a claim equivalent to 1 month's rent, or \$2,109.45.

The tenants take issue with the landlord's failure to complete the move-in condition inspection report, however the consequences of that is a bar from the landlord making a claim against the security deposit for damages. It does not prevent the landlord from making a claim for damages, however the landlord must be able to establish the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

With respect to the landlord's claim for the closet, absent any evidence of the condition of it at the beginning of the tenancy, and where it boils down to one person's word over another, the claim has not been satisfied. The tenant testified that it was broken and unsteady, and there's no evidence to dispute that.

With respect to the landlord's claim for painting, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior painting at 4 years. Since this tenancy has lasted longer than 4 years, the painting is now required in any event, and is normal wear and tear.

The *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. However, the issue of cleaning at the end of the tenancy has nothing to do with the cleaning required at the beginning of the tenancy. A landlord is required to provide suitable housing and a

tenant is required to leave a rental unit reasonably clean at the end of the tenancy. The landlord claims \$356.00 for cleaning, but in the absence of the evidence to satisfy me that cleaning was required at the end of the tenancy, the landlord's claim cannot succeed.

With respect to the tenants' claims for painting and repairing closets, that is a landlord's responsibility. A tenant may not make improvements and claim any amounts from a landlord without the landlord's written consent. Similarly, a tenant may not change windows and expect the landlord to pay for that. The only instance where a tenant can claim repairs are repairs made for emergencies, and must notify the landlord and give the landlord an opportunity to make those repairs. Therefore, the tenants' claims for painting and repairing closets are dismissed.

With respect to the tenants' claim for compensation, as stated above, a landlord is required to compensate the tenant the equivalent of 1 month's rent. The tenants claim more because they had to find a place in a hurry and pay more, but I do not accept that the landlord is responsible for that. Further, a landlord may serve notices on a tenant to inspect or to pay rent or a notice to end a tenancy for any other lawful reason. That is not harassment or loss of quiet enjoyment. The landlord testified that she only called twice and emailed twice. I am not satisfied that the tenants have established any claim for loss of quiet enjoyment, and I dismiss the balance of the tenants' monetary claim.

The *Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlord's right to claim against the security deposit for damages is extinguished, and since the tenants do not owe rent to the landlord, the landlord's application to keep the security deposit must be dismissed. However, a landlord is not required to return a security deposit to a tenant unless the tenant provides a forwarding address in writing within a year after the tenancy ends. The tenants have not done so, and I dismiss the tenants' application for recovery of it with leave to reapply.

Having found that the landlord is entitled to recover rent paid for September, 2017 in the amount of \$2,100.00 and the tenants are entitled to compensation in the amount of \$2,109.45 and recovery of the \$100.00 key fob deposit, I set off those amounts and I grant a monetary order in favour of the tenants as against the landlord for the difference in the amount of \$109.45.

The tenants lead no evidence to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and since the tenancy has ended, I dismiss that portion of the tenants' application.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, the landlord's application for an order permitting the landlord to keep all or part of the security deposit is dismissed.

The tenants' application for a monetary order for return of the security deposit is dismissed with leave to reapply.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$109.45.

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 08, 2017

Residential Tenancy Branch