Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, MNDCL-S, FFL, CNC, MNDCT, OLC, FFT

Introduction

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

- an Order of Possession based on their 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlords' 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Tenant DI (the tenant), who represented the interests of both tenants at this hearing, confirmed that the tenants received the landlords' 1 Month Notice placed in their

mailbox on December 28, 2017. I find that the tenants were duly served with the 1 Month Notice in accordance with section 88 of the *Act*.

As both parties confirmed that they received one another's dispute resolution hearing packages and written evidence packages, I find that these documents were duly served to one another in accordance with sections 88 and 89 of the *Act*.

The only evidence that I could not consider as part of these applications was a video provided by the tenants, which exceeded the size that could be successfully downloaded on the Residential Tenancy Branch's evidence website.

At the commencement of this hearing, the parties agreed that the tenants vacated the rental unit on February 1, 2018. As the landlords have obtained vacant possession of the rental unit, the tenant withdrew the tenants' application to cancel the 1 Month Notice and the landlords withdrew their application to obtain an Order of Possession on the basis of the 1 Month Notice. These portions of the two applications are hereby withdrawn.

Issues(s) to be Decided

Are the tenants entitled to a retroactive rent reduction in the form of a monetary award for the loss in the value of their tenancy? Are the tenants entitled to a monetary award for losses they incurred during this tenancy? Are the landlords entitled to a monetary award for damage and losses arising out of this tenancy? Are either of the parties entitled to recover the filing fee for their applications from one another?

Background and Evidence

This tenancy for the basement suite in a two-unit residence began on May 1, 2015, on the basis of a one-year fixed term written Residential Tenancy Agreement (the Agreement_, entered into written evidence for this hearing. The landlords live in the upstairs portion of this building. At the expiration of the first one-year term, a second one-year fixed term tenancy commenced on May 1, 2016. A final one-year fixed term tenancy agreement was established for the period from May 21, 2017, until April 30, 2018. Monthly rent by the end of this tenancy was set at $1,500.00, payable in advance on the first of each month, plus 50% of the gas and hydro bills for this property. The landlords continue to hold the tenants' $750.00 security deposit paid when this tenancy began.

The landlords' application for a monetary award of $17,935.37 included $14,435.37 for their estimate of damage that has occurred during the course of this tenancy for which the tenants are responsible. Their application also included a $3,500.00 claim for stress, anxiety and depression resulting from the tenants' actions and behaviours.

The tenants applied for a monetary award of $7,665.00. With the exception of a claim for $80.39 in plumbing repairs, the majority of the tenants' claim was for their loss of quiet enjoyment during this tenancy. In their Monetary Order Worksheet, the tenants explained that their claim for $7,575.00 for loss of quiet enjoyment and harassment was for a five-month period from August 2017 until the end of December 2017. This amount approximates their rental payments for that five-month period.

In their written evidence and in the tenant's sworn testimony, the tenants maintained that the landlords had subjected them to an ongoing campaign of harassment after the landlords conducted an inspection of the tenants' rental unit in July 29, 2017. Prior to that time, the landlords had not inspected the rental unit since May 1, 2016. The tenant gave undisputed sworn testimony, supported by a joint inspection report entered into written evidence, that the landlords had cause to enter the rental unit in July 2017, when a smoke alarm sounded when the tenants were away on vacation. The tenant said that at the time that the smoke alarm sounded the rental unit was in admittedly "bad shape." In the July 29, 2017 inspection report signed by both the landlords and the tenants, a number of concerns about the condition of the rental unit identified by the landlords were noted. In succeeding months, the landlords conducted regular monthly inspections with the tenants. The tenant testified that the tenants found the comments made by the landlords during these inspections and included in the reports of these inspections were belittling, stressful and harassing. While the tenant agreed that the landlords were within their rights to conduct these inspections, the tenant did not believe that the landlords were entitled to turn these inspections into opportunities to call the tenants names or to express their opinions on an ongoing basis as to problems that the landlords believed the tenants were responsible for repairing or maintaining. The tenant said that the landlords blamed the tenants for everything that went wrong in the rental unit, often requiring the tenant to undertake repairs that the tenant believed were in actuality the landlords' responsibility. The tenant said that letters and reports provided by the landlords were "tumultuous" and "demeaning." The tenant expressed his belief that the 30-day inspections allowed under the *Act* are not designed to allow landlords to take photographs on an ongoing basis of the condition of a rental unit during the course of a tenancy. The tenant asserted that the landlords had no right to come into the tenants' rental unit during their tenancy to give the tenants directions on how they were to look after the rental unit.

The tenant also provided written evidence and sworn testimony regarding $80.39 in plumbing repairs to the ensuite toilet. The tenant maintained that the landlords required the tenants to pay for these repairs, when these repairs should have been the responsibility of the landlords.

Landlord PL (the landlord) testified that they did not believe that they had harassed the tenants. The landlord noted that the tenants had signed each of the inspection reports. Both landlords maintained that they had expressed concerns about the extent to which the tenants' standard of care for their rental unit presented legitimate questions as to health and fire safety for their property, where the landlords also reside. The landlord asserted that the concerns raised were an attempt to mitigate the damage to the rental unit, and to maintain safe and healthy conditions. They said that at the end of the tenancy, the smell of urine emanating from one of the bedrooms was so pervasive that it may have damaged the drywall. Despite their best efforts to encourage the tenants to take better care of their rental suite, the landlords testified that the rental unit was in poor condition at the end of this tenancy. The landlords estimated that it would cost over $14,000.00 to restore the rental unit to the condition it was in when this tenancy began.

The landlord also gave sworn testimony that the tenants' failure to properly maintain their rental unit increased her stress level and exacerbated her existing heart condition. The landlord said that the tenants were responsible for this elevation in her level of stress.

The landlords supplied a copy of an October 3, 2017 letter to the tenants in which the landlords noted that on September 25, 2017, Landlord DL had repaired a drain spout and plug that the tenant had "broken/damaged" in the tenants' ensuite bathroom. At Point 11 of their written rebuttal to the tenants' evidence, the landlords outlined the circumstances surrounding their discovery of the damage to this plug and the leak that required the landlords' work to repair this item. At the hearing, the tenant said that they did not know the condition of the plug before it became detached. The tenant claimed that he was not responsible for this damage as it was in the course of normal wear and tear that could be associated with this type of fixture.

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.

Analysis – Landlords' Claim for a Monetary Award

With respect to the landlords' application for a monetary award for damage and losses arising out of this tenancy, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, the tenancy ended a few days before this hearing, and the landlords have not yet undertaken any of the repairs they identified in their claim for a monetary award for damage. They also stated that the amounts identified in the estimate they entered into their written evidence were based on their own companies' anticipated costs and not from any outside contractor or supplier of services. It is quite likely that some elements of the landlords' estimate will need to be revised now that the landlords have full access to the rental unit and now that they know the extent to which the rental unit requires repair.

As it appears that the landlords' claim for a monetary award was premature, I dismiss the landlords' claim for a monetary award with leave to reapply.

Analysis- Tenants' Claim for a Monetary Award

As outlined above, the onus is on the tenants to prove on the balance of probabilities that they are entitled to a monetary award.

Section 19 of the Agreement establishing this tenancy included the following provision:

> *…The Tenant shall, at the Tenant's sole expense, make all required repairs to the plumbing, range, oven, heating apparatus, electric and gas fixtures, other mechanical devices and systems, floors, ceilings and walls, whenever damage to such items shall have resulted from the Tenant's misuse, waste, or neglect, or that of the Tenant's family, agent or visitor. The Tenant shall also maintain the washer and dryer while being used by the Tenant…*

I should first note that section 6 of the *Act* establishes that any provisions in an agreement that contravene the wording of the *Act* have no legal effect as they are unconscionable. Although it is not at issue in this application, tenants are not responsible for maintenance of appliances such as a washer and dryer, owned by the landlords.

I have examined the above provision in the Agreement, with a view to whether the landlords' charge of $80.39 to repair the drain spout and plug truly resulted from "the Tenant's misuse, waste, or neglect." In this case, I find that the landlords have relied on a statement made to them by the tenants' children that does not necessarily establish that the damage occurred as a result of misuse, waste or neglect, the terms selected by the landlords' in this section of the Agreement. As I am not satisfied that the landlords have demonstrated to the extent required that the tenants were responsible for the repairs to the drain spout and plug, I issue the tenants' a monetary award of $80.30 for the landlord's charge for the repair of this item.

The tenants have applied for a monetary award equivalent to the amount of their rent for five of the last six months of their tenancy for their loss of quiet enjoyment. Their application for this award rests primarily on section 28 of the *Act*, which reads in part as follows:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> > *(a) reasonable privacy;*
> >
> > *(b) freedom from unreasonable disturbance;*
> >
> > *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> >
> > *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

In this case, the tenants were not disputing the landlords' right to inspect the rental unit in accordance with section 29 of the *Act*. Rather, the tenants appear to be relying primarily, and almost exclusively on section 28(b) of the *Act* in maintaining that the extent of disruption and harassment exhibited by the landlords was so extreme that it

entitled them to reside at the rental unit rent free from August 1, 2017 until December 31, 2017, three days after the landlords issued their 1 Month Notice.

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." This can include a reduction in the value of a tenancy agreement because the landlord did not allow a tenant quiet enjoyment of the rental unit free from unreasonable disturbance.

The parties have presented two very different accounts of the tenants' claim that the landlords' interactions with them following the July 29, 2017 inspection of the rental unit constituted harassment and reduced the tenants' right to quiet enjoyment of their rental unit free from unreasonable disturbance. The tenants' written evidence and sworn testimony presented the landlords as the initiators of a prolonged series of harassing measures that infringed upon the tenants' lawful right to quiet enjoyment. By contrast, the landlords provided written evidence and sworn testimony that their interactions with the tenants over that period were prompted by justifiable concerns about the extent to which the tenants' failure to take proper care of their rental unit was jeopardizing the health, safety and value of the landlords' property.

In considering this matter, I first observe that the landlords appear to have adopted a very different view of the purpose of conducting monthly inspections of this rental unit than was intended by section 29 of the *Act*. As I noted during the hearing, section 29 enables landlords to inspect premises to ensure that there has been compliance with the provisions of the tenancy agreement and the *Act* during the course of a tenancy. If tenants are not abiding by the terms of their tenancy agreement or complying with the *Act*, landlords typically outline concerns in writing as a possible precursor to issuing a 1 Month Notice. In this case, the landlords seem to have considered each of the monthly inspections as being on par with a joint move-out condition inspection. No tenant is required to undertake minor repairs to a rental unit that do not present some type of hazard to a rental unit until the end of that tenancy. Nor are tenants expected to clean the premises by the date of each condition inspection to the same level that the landlords would expect to have occurred by the end of a tenancy.

I can appreciate why the tenants feel that many of the comments that the landlords have included in their ongoing condition inspections were directed at the tenants' housekeeping practices. However, as the landlords have noted, the tenants jointly signed most, if not all, of these condition inspection reports and there was no obligation that they had to do so. Joint condition inspection reports are only required by the *Act* at

the beginning and end of a tenancy. Similarly, there was no requirement that the tenants take action to address any of the directions, comments and remarks about the condition of various features of the tenancy in the reports prepared by the landlords or noted in their emails. The tenants were also not required to comply with any of the landlords' requests that the tenants undertake specific actions such as professional carpet cleaning during the course of this tenancy. While the extent of the negative feedback provided by the landlords during these monthly inspections was certainly more than usually occurs during tenancies, the tenants also appear to have realized that failure to take corrective action requested by the landlords could have prompted the landlords' issuance of a 1 Month Notice much earlier than was the case.

Although the landlords were certainly more persistent than most in pursuing their concerns about the tenants' ongoing maintenance of their rental unit, I do not find that this level of persistence necessarily equates to the harassment or unreasonable disturbance that the tenants are claiming occurred during the latter stages of this tenancy. Following any of the landlords' condition inspections, they could have issued a 1 Month Notice, but instead strove to allow the tenants to resolve the landlords' concerns about the hazards that were being presented to the house, where the landlords also reside. While the amount of the landlords' monetary claim for damage is no indication of what they may be entitled to receive in compensation once they undertake repairs, the landlords were clearly interested in trying to minimize both their own exposure to losses and the losses that they appear intent on passing along to the tenants. Concerns about fire, health and safety hazards are legitimate reasons for landlords to undertake regular inspections of rental units below their own living quarters.

Under these circumstances, I find insufficient grounds to accept the tenants' claim that the landlords' actions and behaviours extended beyond what prudent landlords would be exhibiting given the legitimate concerns the landlords had about the condition of the basement suite they had rented to the tenants. The persistence of some of the landlords' requests was no doubt disconcerting to the tenants. However, I find that the landlords have provided sufficient evidence and testimony to demonstrate they had reason to be concerned about what was happening in the rental space they had committed to rent to the tenants until April 30, 2018. Although my decision in no way condones all of the landlords' communications with these tenants, I find that the landlords' actions and behaviours did not go so far as to unreasonably disturb the tenants to the extent that they are entitled to any type of monetary award. For these reasons, I dismiss the tenants' application for a monetary award for their loss of quiet enjoyment and make no monetary award regarding this aspect of their tenancy.

As the tenants have been partially successful in their application, I allow them to recover one-half of their $100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $130.39, which allows the tenants to recover a loss they incurred during this tenancy, as well as one-half of their filing fee. I dismiss the remainder of the tenants' application without leave to reapply.

I dismiss the landlords' application for a monetary award with leave to reapply.

The tenants' application to cancel the landlords' 1 Month Notice and the landlords' application to obtain an Order of Possession based on the 1 Month Notice are withdrawn.

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 05, 2018

Residential Tenancy Branch