Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S
MNDCT, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (an "Application") and an Amendment to an Application for Dispute Resolution (an "Amendment") filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking the return of her security deposit and compensation for the loss of quiet enjoyment of the rental unit.

This hearing also dealt with a cross- Application and an Amendment filed by the Landlords under the *Act*, seeking a Monetary Order for damage to the rental unit, outstanding rent or utilities, recovery of the filing fee, and other money owed, as well as retention of the Tenant's security deposit.

The hearing was originally convened by telephone conference call on January 9, 2018, at 9:30 A.M. and was attended by the Landlords, the witness for the Landlords, and the Tenant. All parties provided affirmed testimony. The hearing was subsequently adjourned due to the complex nature of the disputes and the time constraints for the hearing. An interim decision was made on January 19, 2018, at which time some preliminary matters were determined. For the sake of brevity I will not reproduce here the evidence summarized in that interim decision or the findings of fact made with regards to these preliminary matters. As a result, the interim decision should be read in conjunction with this decision.

The reconvened hearing was set for March 22, 2018, at 9:30 A.M. and a copy of the interim decision and the Notice of Hearing were sent to each party by the Residential Tenancy Branch (the "Branch"). The reconvened hearing was convened by telephone conference call on March 22, 2018, at 9:30 A.M. and was attended by the Tenant, the witness for the Tenant, and the Landlords. All parties provided affirmed testimony.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of

Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any order issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Although my decision is given more than 30 days after the conclusion of the proceedings, I find that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if the decision is given more than 30 days after the conclusion of the proceedings.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement and the return of her security deposit pursuant to sections 38 and 67 of the *Act*?

Are the Landlords entitled to a Monetary Order and to retain all or a portion of the Tenant's security deposit for damage to the rental unit, outstanding rent or utilities, other money owed, and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed-term tenancy began on August 1, 2017, and that rent in the amount of $1,500.00 is due on the first day of each month. The tenancy agreement also states that the rent will increase by $800.00 per month for each additional tenant or occupant who moves into the property. Both parties agreed that a security deposit in the amount of $750.00 was also paid, which the Landlords still hold.

The Application filed by the Landlords states that they are seeking $7,930.00 for damage, loss, money owed, and recovery of the filing fee and retention of the Tenant's security deposit to offset this amount. The Tenant is seeking $4,500.00 for loss of quiet enjoyment of the rental unit and the return of her security deposit.

In the hearing the Landlords testified that shortly after the Tenant moved in, they became aware that another adult was residing in the rental unit with her and her two

children. The Landlords stated that they approached the Tenant about the additional occupant and were advised that he was only a visitor. The Landlords stated that the additional occupant continued to reside in the rental unit and began receiving mail in his name at that address. As a result, the Landlords requested that the Tenant pay the additional $800.00 in rent per month required by the tenancy agreement for the additional occupant but the Tenant refused.

The Landlords stated that they were advised by the Tenant's moving company that the additional occupant is a Tenant and that they and their neighbours witnessed him in the rental unit and on the property every day during the tenancy. The Landlord's called a witness who testified that she is the Tenant's neighbour and saw the additional occupant at the property frequently and believes that the additional occupant, who is the father of the Tenant's children, did in fact reside with the Tenant due to her observations of his presence at the property on a daily basis and her children's' interactions with the family. The Landlords testified that the additional occupant purchased a vehicle and received mail at the rental unit, which supports their assertion that he was in fact an additional occupant.

The Tenant testified that the alleged additional occupant, who is the father of her children, resides in another province and was simply visiting to assist her oldest son with the transition. The Tenant stated that although he frequently visited their property, he did not reside there and was in fact staying with his father in a neighbouring community. The Tenant called a witness, who is the sister of the alleged additional occupant, who testified that her brother resided with their father during his visit and confirmed that he has now returned home to another province. The Tenant stated that due to his work schedule and the fact that he works in a remote camp, the alleged additional occupant could not attend the hearing to provide testimony. The Tenant testified that the truck referred to by the Landlords is in fact her vehicle, and provided a copy of the vehicle insurance. However, the Tenant acknowledged that it was sometimes used by her visitor. The Tenant also acknowledged that mail was received at the rental address in the same name as her guest but stated that this was actually an administrative error as the mail relates to her son. The Tenant stated that her son's middle name and surname are the same as his father's first name and surname and testified that when filling out government documents for her son, she accidentally omitted her son's first name on the form. As a result, the Tenant stated that the mail actually relates to her son and not the alleged additional occupant.

Further to this, the Tenant stated that the Landlord actually offered to increase the rent by only $100.00 due to the alleged additional occupant and submitted a copy of a text

message from the Landlord regarding this offer. The Tenant stated that she refused to pay this additional amount as her visitor was not in fact an occupant. The Tenant stated that her refusal to pay an extra $100.00 in rent supports her position that her visitor was not in fact an occupant as she was well aware that the tenancy agreement allows for an $800.00 per month rent increase per additional occupant. As a result, she argued that it would have been illogical for her to refuse the $100.00 per month rent increase if her visitor was in fact an occupant as it was $700.00 less than the maximum the Landlord was entitled to request.

Both parties agreed that the tenancy had a one year fixed-term with an end date of August 1, 2018, and that the Tenant ended the tenancy early when she gave notice on October 19, 2017, and vacated the rental unit on October 31, 2017. The Tenant sought $4,500.00 for loss of quiet enjoyment and stated that she is not responsible to pay the Landlords for lost rent as she ended the tenancy due to harassment and breaches of the *Act* and the tenancy agreement.

In her Application the Tenant sought the return of the rent paid for August – October, 2017, in the amount of $4,500.00 for loss of quiet enjoyment; however, in the hearing the Tenant reduced this claim to $3,000.00. The Tenant stated that the Landlord's violated her privacy by having video cameras on the property and entering her unit frequently and without proper notice. The Tenant also testified that the Landlords harassed her by continually complaining about issues and that one of the Landlords threatened her while in her rental unit. The Landlords confirmed that they have cameras on the property for security purposes but stated they are on the exterior of the home, not in the Tenant's rental unit. Both parties submitted written evidence from witnesses or friends that they were being harassed by the other party. The Landlords also confirmed that there were ongoing issues in the tenancy which they brought to the attention of the Tenant but stated they related to loud screaming in the rental unit at night, police attendance at the rental unit, smoking on the property, and damage to the rental unit. The Landlords argued that they brought these issues to the attention of the Tenant in an effort to resolve them and continue the tenancy and that they do not constitute harassment as they were simply conducting the regular duties of a landlord.

The Landlords denied that they entered the Tenant's suite without notice or proper purpose and stated that they only entered the Tenant's suite to fix things at her request which was always arranged by text message. The Tenant stated that this is inaccurate and that the Landlords entered her rental unit without authorization on four occasions in one month. The Tenant stated that on one such occasion they entered with a real estate agent who took photos of the property. Although the Tenant argued that the remaining

entries were without merit, both parties eventually agreed that several of the entries were to fix items at the Tenant's request.

The Tenant stated that she posted her written notice to end the tenancy effective October 31, 2017, on the Landlord's door on October 19, 2017, and the Landlords confirmed receipt of this notice on October 20, 2017.

The Landlords stated that they were unable to re-rent the property for November due to the Tenant's late notice and the state of the rental unit upon move-out. The Landlords testified that they posted the first advertisement to re-rent the unit on October 22, 2017, at a rate of $1450.00 per month. The Landlords testified that when they received no interest after a week, they reduced the rent to $1,300.00 as they were having difficulty covering the mortgage. The Landlords testified that they were unable to find a suitable tenant until February 1, 2018, as no one wanted to move so close to Christmas, and that they were only able to sign a short-term three-month tenancy agreement at $1,300.00 a month. As a result, the Landlords sought $1,500.0 per month in lost rent for November, 2017 – January, 2018, and $200.00 per month from February, 2018 – April, 2018.

The Tenant disputed the Landlords' claim for loss of rent stating that the Landlords were simply being too selective and did not make a strong effort to re-rent the unit at the same rate she paid. The Tenant stated that the vacancy rate for the area is very low and the Landlords could have re-rented the unit sooner and at a higher rental rate but they simply chose not to.

Both parties agreed that condition inspections were completed at the start and at the end of the tenancy and the Tenant agreed that she received a copy two days after the inspections. However, the Tenant argued that the Landlords added information to the move-out condition inspection form after both parties had signed it. Although the Landlords' stated that the rental unit was newly renovated at the time the Tenant moved in, the initial condition inspection was not completed by both parties until after the Tenant's belongings were already moved into the rental unit and the Landlords did not submit any documentary evidence of the condition of the rental unit prior to the condition inspection or the placement of the Tenant's belongings in the rental unit.

The Landlords sought $992.33 for damage to the rental unit; $227.33 in cleaning costs, $350.00 for wall repairs and paint, $40.00 for a damaged window screen, $175.00 for the replacement of a damaged baseboard heater, and $200.00 for the repair of damaged flooring in the living room. The Landlord's sought cleaning costs as they

stated they were required to hire a cleaning company as the property was not cleaned at the end of the Tenancy. They submitted a receipt for the cleaning company in support of this testimony and stated the Tenant agreed to this cost. The Tenant denied this testimony. The Tenant also disputed that cleaning was required and stated the move out condition inspection report does not state the unit was dirty. The Tenant agreed that she damaged the baseboard heater with her bed frame and that the $175.00 repair cost sought by the Landlords for its replacement is reasonable. The Landlords stated that the walls required repair and repainting due to damage. The Tenant agreed that she caused some damage to several walls through the use of tape; however, she argued that the majority of the damage to the walls is wear and tear.

The Landlords' sought the cost of replacing a broken window screen; however, the Tenant stated that no window screen was provided. The tenant also stated that the notations by the Landlords on the move-out condition inspection report are inconsistent with regards to whether the screen was missing or damaged and therefore the Landlords testimony is not reliable in this regard. The Landlords also sought compensation for the repair of flooring damage in the living room and provided photographic evidence of the damage. However, the Tenant argued that the damage must have been there prior to the start of the tenancy as her couch was in that location and has padded protectors on the feet. The Tenant provided photographic evidence of the padding on the feet of the couch. Although the Landlords stated that the flooring was new prior to the start of the tenancy, they did not submit any documentary evidence in support of this testimony and both parties agreed that the move-in condition inspection was not completed until after the Tenant's belongings were already in the rental unit.

The Tenant also sought the return of her security deposit as she denied giving permission to the Landlords to keep any portion of it and stated that the Landlords did not return it or file against it within the 15 days required by the *Act*.

Analysis

Section 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case falls on the person making the claim.

The Landlords stated that mail continues to be received at the rental unit in the name of the alleged additional occupant and provided copies of the envelopes for consideration. However, the Tenant stated that this is an administrative error and that the mail relates to her son, who has a very similar name. Both parties and their witnesses also provided equally compelling and credible opposing testimony regarding whether the alleged additional occupant was a visitor or a resident of the rental unit. Based on the documentary evidence and testimony before me, I find that the Landlords have failed to satisfy me on a balance of probabilities that the person frequently witnessed at the property was in fact an additional occupant. As a result, I dismiss the Landlords' monetary claim for $2,400.00 in unpaid rent due to the additional occupant without leave to reapply.

Having made this finding, I will now turn my mind to whether the Landlords are entitled to loss of rent for the duration of the Tenant's fixed term. Both parties agreed that the tenancy had a one year fixed-term with an end date of August 1, 2018, and that the Tenant ended the tenancy early when she gave notice and vacated the rental unit on October 31, 2017. The Tenant testified that she ended the tenancy early because the Landlords were harassing her and illegally entering her rental unit.

Section 45(3) of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. Although the Tenant argued that she had sufficient cause to end the fixed-term tenancy early due to harassment, safety concerns, and the Landlords' failure to comply with the tenancy agreement, she did not provide me with any evidence or testimony to establish which terms of the tenancy agreement are material terms or that the Landlords breached these material terms, should they exist. Further to this, the Tenant admitted that she never gave the Landlords written notice of their failure to comply with a material term of the tenancy agreement or a warning that failure to comply with the material term would result in an end to the tenancy. Based on the above, and given that the Tenant has not provide me with any evidence that she had any other reason to end the fixed-term

tenancy early under the *Act*, I find that the Tenant did not have cause to end the fixed-term tenancy early.

As a result, I find that the Tenant was responsible to pay the $1,500.00 in rent on time and in full each month until the end of the fixed term. Residential Tenancy Policy Guideline (the "Policy Guideline") #3 states that damages awarded to a landlord for loss of rent are to be in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy and may include compensating the landlord for the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises at for the balance of the un-expired term of the tenancy. Policy Guideline #3 also states that a landlord's claim for loss of rent is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Although the Tenant argued that the Landlord's could have re-rented the unit sooner and at a better rental rate, the Landlords testified that they advertised the unit for rent on October 22, 2017, which is only two days after they received the Tenant's written notice to end the tenancy effective October 31, 2017. Although the Tenant argued the Landlords were being too choosey, the Landlords testified that they simply were not able to find a tenant due to the proximity to Christmas when many people do not wish to move and that they actively reduced the rent when there was no interest in an effort to get a new tenant as quickly as possible. While the Tenant argued that the Landlords could have re-rented the unit at the same rate she paid, she did not submit any evidence to corroborate this statement and I find that Policy Guideline #3 only requires that the Landlords to re-rent the unit at a reasonably economic rate. Further to this, I find that the Landlords posted an advertisement as soon as reasonably possible and acted reasonably by reducing the rent when they could not attract a suitable tenant. Based on the above I find that the Landlords made every effort to mitigate their loss by re-renting the premises at a reasonably economic rent and they are therefore entitled to monetary compensation for the loss of rent between November, 2017 – January, 2018, in the amount of $4,500.00 and February, 2018 – April, 2018, in the amount of $600.00. As the Landlords testified that a tenancy agreement for the balance of the Tenant's term (May, 2018 – August, 2018) has not yet been signed, no findings of fact have been made in relation to loss of rent for that time period.

Having made this finding, I will now turn my mind to the Landlords' claim for damage to the rental unit. Although the Tenant argued that the Landlord added notations to the

move-out condition inspection report after both parties had signed it, she did not submit any evidence to corroborate this testimony. As a result, I find the Tenant has not satisfied me that the condition inspection report is in any way inaccurate or invalid or that the Landlords' altered it after it was signed by both parties.

The Tenant agreed that she damaged the baseboard and that the $175.00 repair cost sought by the Landlords is reasonable. The Tenant also agreed that she caused some damage to several walls through the use of tape; however, she argued that the majority of the damage to the walls is wear and tear. Policy Guideline #1 states that tenants are responsible for damage caused by large nails, screws or the use of tape on walls. It also defines reasonable wear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I do not find that wall damage caused by the use of tape constitutes wear and tear. Further to this, I find that the photographs submitted by the Landlords show that there is also damage to many walls by way of large scratches and scuffs which I do not find are the result of reasonable use of the premises. As a result, I grant the Landlords' $350.00 claim for painting and repair costs.

The Landlord's sought $227.33 in cleaning costs as they stated they were required to hire a cleaning company as the property was not cleaned at the end of the Tenancy. Although the Tenant stated that the condition inspection report does not state that the unit required cleaning, I note that the code "DT" was noted for numerous areas of the rental unit such as the walls and trim for most rooms, the fridge, the floors, the bathroom door, the master bedroom closet doors, the exterior of the property and the garbage containers. On the condition inspection report form it states that "DT" is the code for dirty and I note that the Tenant indicated on the condition inspection report that she agrees that the report fairly represents the condition of the rental unit at the end of the tenancy. Based on the above, I find that the Landlords are entitled to $227.33 in cleaning costs.

The Landlords claimed $40.00 for a broken screen; however, the Tenant stated that she did not damage a screen as no screen was provided. Further to this the Tenant pointed to the condition inspection report which states in one section that the screen is missing and, in another section, that the screen is damaged. As a result, the Tenant argued that the Landlords' testimony and evidence is inconsistent and unreliable. The Landlords stated that they initially thought the screen was missing but found it damaged outside the following day.

As the parties provided contradictory testimony regarding the screen and the Landlords provided inconsistent evidence regarding the screen in the condition inspection report, I find that the Landlords have failed to satisfy me that they are entitled to $40.00 for the screen and their claim for this amount is dismissed without leave to reapply.

The parties disagreed about whether damage to the flooring under the area in which the couch was located was present at the start of the tenancy. Although the Landlords stated that the rental unit was newly renovated at the time the Tenant moved in, the initial condition inspection was not completed by both parties until after the Tenant's belongings were already moved into the rental unit and the Landlords did not submit any documentary evidence of the condition of the rental unit prior to the condition inspection or the placement of the Tenant's belongings in the rental unit. Section 14 of the regulation states that the condition inspection must be completed when the unit is empty of the Tenant's possessions, unless the parties agree on a different time. Although it was open to the parties to conduct the initial condition inspection after the Tenant's belongings had already been moved into the rental unit, I find that in doing so, the condition inspection lacks full transparency as it would not have been possible for both parties to see the full condition of all areas of the rental unit at the time of the inspection. As a result of the above I find the Landlords have failed to satisfy me on a balance of probabilities that the damage to the living room floor was not present at the start of the tenancy. Further to this, the Tenant submitted photographs of furniture pads on the feet of the couch and argued that the floor damage therefore could not have been caused by the couch. As a result, I dismiss the Landlords' monetary claim for $200.00 in floor repair costs without leave to reapply.

The Tenant claimed $4,500.00 for loss of quiet enjoyment due to improper entry into the rental unit, the use of security cameras, and harassment; which is the total amount of rent she paid during her tenancy. In the hearing she reduced this amount to $3,000.00, which is equal to two months' rent. However, both parties agreed that the security cameras are outside the rental unit and both parties submitted witness evidence that they were being harassed by the other party. Further to this, I find the majority of the instances the Tenant claims as harassment, are simply instances of the Landlords exercising their duties and obligations as Landlords under the *Act*. Based on the above, I find that the Tenant has failed to submit evidence or testimony to satisfy me, on a balance of probabilities, that harassment took place on the part of the Landlords. Further to this, while the Tenant stated that the Landlords failed to give proper notice to enter the rental unit, both parties submitted evidence that they frequently made arrangements for things such as the condition inspections, access to laundry, and access to the rental unit for the purpose of repairs by text message. Although the

Tenant argued that the Landlords did not give proper notice for these entries, her testimony and the text messages before me for consideration suggest that she granted the Landlords access to the rental unit on several occasions despite the lack of 24 hour written notice. Section 29 of the *Act* allows for a landlord to enter the rental unit without 24 hours written notice, provided the tenant agrees to the entry. As a result of the above I find that the Tenant has failed to satisfy me that the Landlords have breached the *Act* or tenancy agreement resulting in a loss. Further to this, I find the Tenant's claim for the return of most of the rent paid during the tenancy unreasonable as she had use and occupancy of the rental unit during that time. As a result, I dismiss the Tenant's claim for loss of quiet enjoyment without leave to reapply.

The Tenant also sought the return of her security deposit and the move-out condition inspection report shows that the Landlords received the Tenant's forwarding address in writing on October 31, 2017, which is the date the Tenant moved out and the tenancy ended. The evidence before me also shows that the Tenant or her agent attended the move-in and move-out condition inspections. As a result, I find that the Tenant has not extinguished her right to the return of the security deposit. Section 38(1) of the *Act* states that within 15 days of the later of either the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. I do not find that the Landlords had authority under the *Act* to retain an amount from the security deposit at the end of the tenancy and the Tenant testified that she did not give the Landlords permission to retain any amount. Section 38(6) of the *Act* states that if the landlord does not comply with subsection one, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

As the Landlords received the Tenant's forwarding address in writing on October 31, 2017, which is also the date the tenancy ended, I find that they had until November 15, 2017, to either repay the security deposit or file an application against it. As the Landlords did not return the security deposit to the Tenant and did not file their Application with regards to the security deposit until October 16, 2017, I find that they are not entitled to make a claim against the security deposit. I also find that the Landlords therefore owe the Tenant $1,500.00, which is double the amount of the Tenant's security deposit.

Despite the foregoing, section 72 of the *Act* states that if the director orders a tenant to pay any amount to the landlord, the amount may be deducted from any security deposit due to the Tenant. Policy Guideline #17 states that where a landlord applies for a

monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. I have already found above that the Tenant owes the Landlords $5,852.33 for loss of rent and damage to the rental unit. Pursuant to section 72 of the *Act* and Policy Guideline #17, I have deducted the $1,500.00 security deposit owed to the Tenant from the $5,852.33 owed by the Tenant to the Landlords. As a result, I find that the Landlords are entitled to a monetary order in the amount of $4,352.33.

As the Landlords were only partially successful in their claim, I decline to grant them recovery of the $100.00 filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of $4,352.33. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: May 2, 2018

Residential Tenancy Branch