Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking compensation for loss or other money owed and recovery of the filing fee.

The hearing was originally convened by telephone conference call on July 16, 2018, at 11:00 A.M. and was attended by the Tenants and the Landlord. 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 July 23, 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 September 17, 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 September 17, 2018, at 9:30 A.M. and was attended by the Tenants and the Landlord. 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 parties, copies of the decision will be mailed to them at the addresses provided in the Application.

Issue(s) to be Decided

Are the Tenants entitled to compensation for loss or other money owed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the month-to-month tenancy began in October of 2012 and ended on December 5, 2016. The Parties also agreed that rent in the amount of $840.00 was due on the first day of each month.

In their Application, the Tenants sought $10,736.50; however, in the hearing they only claimed $4,732.00 for loss of quiet enjoyment, $2,520.00 in compensation as a result of an agreement with the Landlord and pursuant to section 51of the *Act,* $1,298.00 in compensation for costs associated with moving and $2,171.50 for time spent cleaning and looking for new accommodation.

The parties were both in agreement that the Landlord listed the property for sale during the tenancy. The Landlord stated that despite listing and showing the property, they were unable to sell the property for a reasonable price and it was subsequently taken off the market so that their daughter could reside there instead as it was closer to her university than their family home. The parties agreed that the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on October 21, 2018, which they did not dispute. The Two Month Notice in the documentary evidence before me, dated October 13, 2018, has an effective date of December 31, 2018, and states that the reason for ending the tenancy is because the rental unit will be occupied by the landlord or the landlord's close family member.

In the hearing the parties agreed that the Tenants gave notice pursuant to section 50(1) of the *Act* to vacate the rental unit prior to the effective date of the Two Month Notice and vacated the rental unit on December 5, 2016. The parties also agreed that the Tenants received one free month of rent pursuant to section 51(1) of the *Act*. However, the Tenants argued that they are entitled to $840.00, the equivalent of an additional month of rent, from the Landlord as the result of an agreement reached between them. The Tenants also stated that there is e-mail correspondence in the documentary evidence before me which confirms this agreement. The Landlord acknowledged that discussions occurred between the parties regarding the possibility of additional compensation should a mutual agreement to end the tenancy be reached as the

Landlord was thinking of selling the condo and wanted vacant possession of the rental unit. The Landlord stated that a mutual agreement was not reached between the parties; therefore they are not entitled to any additional compensation. The Tenants disagreed that the offer of one additional month's compensation was conditional on reaching a mutual agreement to end tenancy and was in fact compensation for the inconvenience of having potential buyers view the rental unit.

The Tenants argued that they are entitled to two months' rent in the amount of $1,680.00, pursuant to section 51(2) of the *Act* as neither the Landlord nor their daughter occupied the rental unit at the end of their tenancy. The Tenants stated that after the end of their tenancy, they moved across the street to another rental unit and as a result, they could still see the building in which their former rental unit was located from their new apartment. The Tenants stated that shortly after they moved, they noticed the Landlord in front of the building and a significant amount of traffic entering the building with him for what appeared to be showings. The Tenants stated that they approached some of the people attending the showings who confirmed that although the Landlord had posted an advertisement for a different rental unit, when they attended the building for the showings they were told this was an error and shown the same apartment in which the Tenants had previously resided. Further to this the Tenants stated that they witnessed the new occupants moving into the rental unit, and that these new occupants are not either the Landlord or the Landlord's daughter. In support of this testimony the Tenants provided significant photographic evidence which they state shows the new occupants moving into the building and into their former rental unit. The Tenants also stated that a former neighbour confirmed someone other than the Landlord's daughter moved into the rental unit but was not comfortable appearing as a witness or providing a written statement to that effect.

The Landlord denied that the unit was shown or rented at the end of the tenancy and testified that his daughter moved into the rental unit in January of 2017 and resided there until August of 2017. The Landlord stated that the Tenants' photographs contain no dates or identifying information connecting the people in them to the Tenants' former rental unit. Further to this the Landlord stated that he believes the photographs are actually from 2018 and of people moving into another unit in the building not owned by him. Although the Tenants questioned why the Landlord has not produced evidence that his daughter moved in, such as bills in her name at that address or a written statement from her, or called her as a witness in either of the hearings, the Landlord stated that the bills are in his name and that his daughter was unavailable to attend the hearings. Further to this, the Landlord stated that he has no duty to prove anything in the hearing

as this is the Tenants' claim for monetary compensation and therefore it is up to the Tenants to prove what they are claiming, not his duty to prove otherwise.

The Tenants also sought $1,298.00 in moving costs and $2,171.50 for time spent cleaning and looking for new accommodation. Although the Tenants did not provide any documentary evidence in support of these costs, they stated that these are conservative and accurate estimates of the costs incurred by them either for the payment of movers, or the time spent looking for and securing their new accommodation, as well as cleaning of the former and new rental units. The Landlord stated that he served a lawful Two Month Notice in accordance with the *Act*, which the Tenant's did not dispute, and provided them with the required compensation pursuant to section 51(1) of the *Act*. As a result, he stated he is not responsible for any additional expenses incurred by the Tenants for moving.

The Tenants also sought $4,732.00 for loss of use and quiet enjoyment due to a re-piping project in the building. In the hearing the Tenants testified that the re-piping project took 14 months to complete in their rental unit, instead of the anticipated 4 months, and that during this time they suffered a loss of use of approximately 35% of the total square footage of their rental unit. The Tenants stated that the work in their rental unit began in April 2015 and ran until June of the following year during which time they lost use of a storage closet, the cabinetry under the bathroom sink, the bedroom closet, and one entire wall of the kitchen. The Tenants also testified that they were required to store belongings from the affected areas in other parts of the apartment, such as the dining room, living room, and hallway, and as a result, they lost the use of this additional square footage. In addition to this, the Tenants stated that their use of the bathtub/shower in the rental unit was significantly impacted and restricted for 2 weeks while they accessed areas of the wall and ceiling in the bathroom. In support of their testimony the Tenants provided copies of strata meeting minutes, e-mail correspondence with the Landlord, e-mail correspondence between the strata and the Landlord, and a significant amount of photographic evidence showing the extent of the work being done in their rental unit.

Further to this the Tenants stated that they suffered a significant loss of quiet enjoyment during the re-piping work due to the noise and the constant coming and going of workers and that the Landlord significantly contributed to the delay in the work by failing to pay for it on time. In support of this testimony the Tenants pointed to e-mail correspondence in the documentary evidence before me between the strata and the Landlord.

While the Landlord acknowledged that re-piping work was completed in the building and the rental unit, he stated he was required to have the work completed by the strata and denied that this work took 14 months to complete. The Landlord stated that the work began in April of 2015 and completely ended January 2016. The Landlord stated that the kitchen of the rental unit was only impacted for a few hours and that the Tenants' bathtub/shower was impacted for a maximum of a few days. The Landlord agreed that the bedroom closet could not be used but stated this was only for two months, not a full 14 months. The Landlord also stated that different areas of the apartment were impacted at different times and as a result, the total square footage impacted at any given time was very small. The Landlord did not submit any documentary or other evidence in support of this testimony.

The Landlord denied that there was a delay due to his failure to pay for the work and stated that the e-mail sent by the strata was an error as he had already paid for this work; however, no proof of this error or payment was submitted by the Landlord for my consideration. The Landlord further stated that the Tenants themselves contributed to the delays by refusing to allow access to the rental unit. In support of this testimony the Landlord pointed to e-mail correspondence in the documentary evidence before me regarding the Tenants refusal to allow workers access to the rental unit.

Analysis

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. As a result, I find that the Tenants were required to leave the rental unit reasonably clean at the end of the tenancy, regardless of the reason the tenancy ended. As a result, I dismiss their claim for the cost of cleaning the rental unit without leave to reapply.

Although the Tenants also sought compensation for moving costs and costs incurred looking for, obtaining, and cleaning their new rental unit, they acknowledged in the hearing that they did not dispute the Two Month Notice served on them by the Landlord and instead voluntarily complied with it. Further to this, I note that section 51(2) of the *Act* specifically deals with the amount of compensation due to tenants when a landlord fails to use the rental unit for the stated purpose listed in the Two Month Notice or for the required time period. As the Tenants have applied for compensation pursuant to section 51 of the *Act* and they voluntarily complied with the Two Month Notice, I find that they are not entitled to recovery of the costs incurred by them as a result of their compliance with the Two Month Notice. Their claim for moving costs and costs incurred

looking for, obtaining, and cleaning their new rental unit is therefore dismissed without leave to reapply.

Having made the above findings, I will now turn my mind to whether the Tenants are entitled to the $1,680.00 in compensation sought pursuant to section 51(2) of the *Act.* At the time the Two Month Notice was served, the version of the *Act* that was in force stated the following with regards to compensation owed to tenants in relation to a Two Month Notice:

Tenant's compensation: section 49 notice

> **51**(1)A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
> (2)In addition to the amount payable under subsection (1), if
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> > (a)steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or (b)the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> The landlord, or the purchaser as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Although the Tenants submitted significant photographic evidence in support of their testimony that persons other than the Landlord or the Landlord's close family members occupied the rental unit after the end of their tenancy, I note that none of the photographs submitted by the Tenants contain any date stamps. I also find that the photographs do not contain any information upon which I could reasonably determine that they do in fact show persons other than the Landlord or the Landlord's close family members moving into the rental unit as the photographs are all taken from the outside of the building and do not show the unit number for the Tenants' former rental unit. Further to this, although the Tenants sated that a rental advertisement was posted by the Landlord and that their neighbour confirmed their suspicions that neither the Landlord nor the Landlord's daughter moved into the rental unit, they failed to provide any documentary or other evidence in support of this testimony. The Landlord also testified that his daughter occupied the rental unit for at least 6 months starting within a reasonable period of time after the end of the tenancy.

Rule 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 is on the person making the claim. Based on the above, I find that the Tenants have failed to satisfy me, on a balance of probabilities, that the Landlord failed to use the rental unit for the stated purpose in the Two Month Notice or for the required time period. As a result, their claim for $1,680.00 in compensation pursuant to section 51(2) of the *Act* is therefore dismissed without leave to reapply.

The Tenants also claimed that they are due $840.00 as a result of an agreement with the Landlord and pointed to an e-mail chain in the documentary evidence before me in support of their testimony. In reviewing the e-mails dated June 19, 2016, and June 23, 2016, I note that the Landlord specifically stated in the e-mail dated June 23, 2016, that "as I promised, your last month of rent will be free." Although the Landlord argued that this was part of an attempt to reach a mutual agreement to end tenancy, there is nothing in the e-mail chain that supports this testimony. To me, the e-mail chain clearly establishes that the Tenants intend to vacate the rental unit as soon as they can find alternate accommodation due to the significant disturbances they have dealt with over the building re-piping project and that the Landlord promised them one free month of rent. As this agreement is from June of 2016, and pre-dates the Two Month Notice by several months, I find that this agreement is for one free month of rent in addition to any compensation due to the Tenants pursuant to section 51(1) of the *Act*. As a result, I therefore find that the Tenants are entitled to compensation in the amount of $840.00.

Further to this, he Tenants claimed entitlement to $4,732.00 for loss of use and loss of quiet enjoyment over a 14 month period due to a building re-piping project. Section 7 of the *Act* states that if a landlord or a tenant fails to comply with the *Act*, the regulation, or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Section 7 also states that a landlord or tenant who claims compensation for damage or loss must do whatever is reasonable to minimize that damage or loss. Section 28 of the *Act* also states that a tenant is entitled to quiet enjoyment including but not limited to, the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord's right to enter in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference.

Although the parties disagreed about the overall length and severity of the re-piping project and who was responsible for any delays in the completion of work in the rental unit, ultimately I am satisfied by the overwhelming documentary evidence and testimony

before me from the Tenants that the Landlord significantly and unreasonably breached sections 28 of the *Act* over an extended period of time and that the damages sought by the Tenants are a result of these breaches. However, given the documentary evidence before me that both parties may have contributed to the delay in the completion of the work, I am not satisfied that the Tenant's acted reasonably to minimize their loss at all times. I also have a duty to balance the rights of the Tenants under sections 28 of the *Act* with the Landlord's duty to repair and maintain the rental unit under section 32 of the *Act*. As a result, I am not satisfied that the Tenants are entitled to the entire amount sought and pursuant to Residential Tenancy Policy Guideline #5, I therefore award a reduced claim to the Tenants in the amount of $3,549.00 for loss of use and loss of quiet enjoyment; 75% of the amount sought by the Tenants.

As the Tenants were only partially successful in the Application, I decline to grant recovery of the filing fee. Based on the above, and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of $4,389.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of $4,389.00. The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: October 17, 2018

Residential Tenancy Branch