Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction
The Application for Dispute Resolution filed by the Tenants seeks the following:

a. A monetary order in the sum of $6060
b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. The landlords acknowledged service of the Application for Dispute Resolution/Notice of Hearing. With respect to each of the applicants' claims I find as follows:

Issues to be Decided
The issues to be decided are as follows:
a. Whether the tenant is entitled to a monetary order and if so how much?
b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:
The landlord and CH and DIP entered into a written tenancy agreement that provided that the tenancy would start on October 1, 2014. DIP subsequently moved out.

On August 1, 2016 the landlords and the respondents entered into a written tenancy agreement that provided that the tenancy would start on and continue on a month to month basis. The rent was $975 per month payable in advance on the first day of the

month. The written tenancy agreement provided that the tenants paid a security deposit of $475 and a pet damage deposit of $475. The landlord served a Notice of Rent Increase that increased the rent to $1010 commencing March 1, 2018.

On January 22, 2018 the landlord served a 2 month Notice to End Tenancy on the Tenants by registered mail. The tenants testified they received in on February 1, 2018.

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

On February 17, 2018 the tenants served a 10 day Notice to End Tenancy which ended the tenancy on March 1, 2018. The tenants testified they vacated the rental unit that date.

The landlords paid the tenants $975 for the equivalent of month rent after the tenants vacated. The landlord has also returned the security deposit and pet damage deposits

The Tenants testified that it has come to their attention that the rental unit was not used for the stated purpose and has been used as an Airbnb.

The landlords gave the following evidence:

- The landlord's father provided a statement under oath that he visited his family over Christmas and lived in an art studio/workshop that does not have a stove/oven or bathroom facilities.
- The landlord's father wished to move into the rental unit so that he could be closer to his daughter and grandchildren. He would be paying rent to his daughter and son in law.
- He expected to go back to work on an intermittent basis until hunting season began. In May he was told by his employer there was no work for the 2018 season as they did not get the guide bookings they required.
- As a result he could not continue to pay the full cottage rent and he decided to off set his rent by jointly offering the cottage as an Air BnB unit.
- The landlord testified it was used about 30% to 40% of the time as an Air BnB.
- They landlords testified they are on limited income.

Analysis:

At the hearing the tenants advised that they reduced their claim to $2927 plus an amount for hydro used by the landlord which they had to pay for.

With respect to each of the Tenants claims I find as follows;

a. Section 51(1) of the Act provides that where a landlord serves a 2 month Notice to End Tenancy the tenants are entitled to the equivalent on one month rent. The landlords paid the Tenants $975. However, the rent starting March 1, 2018 was $1010 per month. I determined the tenants are entitled to $35 as the rent for March was $1010.

b. The tenants brought a claim under section 51(2) of the Residential Tenancy Act for the equivalent of 2 months rent. The government amended Residential Tenancy Act to take effect on May 17, 2018 to include the following provision(s).

"51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), **an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement (my emphasis) if**

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, **extenuating circumstances** (my emphasis) prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I determined the May 17, 2018 amendment does not apply to this case for the following reasons:

- The tenancy ended on March 10, 2018.
- The 2 month Notice to End Tenancy was served on the Tenants on February 1, 2018.
- The Amendment does not provide that it would have retroactive effect to a tenancy that had ended 2 ½ months previous and a Notice that had been served on the Tenants 4 ½ months previous.

I determined the relevant legislation which was in place Section 51(2) Residential Tenancy Act, SBC 2002, c 78, <http://canlii.ca/t/532bj> retrieved on 2018-11-20

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.

(b.2) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(b) 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 that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

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.

The Residential Tenancy Act in place at the time the tenancy ended provided that if the landlord failed to comply with section 51(1) the tenants **were not** entitled to the equivalent of 12 months rent **but to the equivalent of 2 months rent.** Further, there was no provision in that Act for an arbitrator to excuse the landlord from paying on the basis that extenuating circumstances prevented the landlord from completing their obligations under section 51(1). .

The grounds set out in the Notice to End Tenancy dated January 22, 2018 is for landlord use. The landlord's father moved into the rental property for a March, April and part of May 2018. However, the landlord's acknowledged the rental unit was used for an Air BnB starting at the end of May 2018. Further it was rented as a Air BnB about 30% to 40%. I determined the landlord has not used the property for the stated purpose for at least 6 months beginning within a reasonable period of time. I do not accept the submission of the landlord that the renting of the unit as an Air BnB and the father moving in when there are no renters of the rental unit complies with the section. I determined that an arbitrator does not have jurisdiction to consider whether the landlord should be excused from paying the equivalent of 2 months rent on the basis of extenuating circumstances as such a provision was not included in the Act that applied at the time.

As a result I determined the tenants are entitled to the equivalent of 2 months rent or the sum of $2020 ($1010 x 2 = $2020).

c. I dismissed the Tenants claim of $400 for the cost of cleaning as the Tenants failed to present sufficient proof to establish this claim. The tenants failed to prove that the cleaning work they allegedly did was more than what they normally do in day to day living.

d. I dismissed the claim for the cost of a moving truck. The previous legislation provided that the landlord had to pay "reasonable moving expenses" when he/she served 2 month Notice. That was changed and under section 51(1) of

the Act the landlord was required to pay the equivalent of one month rent. I determined the cost of moving expenses is included in the requirement that the landlord pay the equivalent of one month rent.

e. I dismissed the Tenants' claim of $18.50 for the cost of a recycling fee as the Tenants failed to prove the landlord breach of the Act caused this loss.

f. I dismissed the claim of $325 for the right to privacy and quiet enjoyment. The Tenants submitted their right to privacy and quiet enjoyment was interfered with for an intermittent period of 10 days. The landlord testified the roofing work was necessary ensure the structural integrity to the rental unit. Structural repairs were completed within 20 hours (this required access to the interior of the rental unit to gain access to the rafters). Roof replacement was completed shortly afterwards. The tenant did not notify the landlord of their noise concerns until it was discovered that they sent the roofing contractor home one day. Policy Guideline #6 includes the following:

A. LEGISLATIVE FRAMEWORK

Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises."

I dismissed this claim as I determined the disturbances were not so significant or unreasonable to amount to an unreasonable disturbance. Further, the Policy Guideline provide that an arbitrator must balance the Tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. I determined the tenants failed to prove this claim.

g. The monetary order worksheet seeks compensation for hydro paid the Tenants but used by the landlord for the cost of pumping water to the farm and other uses. The tenants testified they had not means to quantify this claim but point out their hydro cost was greater in the summer than winter. At the hearing they estimated it cost them an additional $500. The landlord acknowledged there was one meter for this portion of the property but the tenants were aware of this when they rented.

I determined the tenants are not under an obligation to provide hydro costs for the landlord's use. However, the tenants have not been able to present sufficient evidence to this claim. However, Policy Guideline #16 includes the following dealing with the award of nominal damages. :

> "An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I determined there has been an infraction of a legal right but that the Tenants failed to prove a significant loss. In the circumstances I determined the Tenants are entitled to nominal damages in the sum of $75 for this claim.

<u>Monetary Order and Cost of Filing fee</u>

I ordered the landlord(s) to pay to the tenant the sum of $2130 plus the sum of $100 in respect of the filing fee paid for a total of $2230.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on the parties.

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: November 20, 2018

Residential Tenancy Branch