Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; 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 landlord for the cost of the application.

The tenant and legal counsel for the tenant attended the hearing, and the landlord was represented by an agent. The tenant and the landlord's agent each gave affirmed testimony, and the parties and counsel were given the opportunity to question each other and give submissions.

At the commencement of the hearing the landlord's agent raised a jurisdictional issue with respect to time limitations. The parties agreed that the tenant gave 10 days written notice to end the tenancy on August 4, 2016 by placing it in the landlord's mailbox, which I found is deemed to have been received 3 days later, or August 7, 2016. The *Residential Tenancy Act* specifies that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the *Act* and I found that the effective date of that notice could not be earlier than August 17, 2016. The tenant filed this Application for Dispute Resolution on August 15, 2018, which I found is within the 2 year limitation period.

The landlord's agent also applied to adjourn the hearing stating that he received the Hearing Package from the tenant on November 23, 2018 but didn't open it because it was addressed to the landlord "care of" the address of the landlord's agent. He delivered it to the landlord on December 5 who returned it to the landlord's agent on December 6. By then it was already past the deadline for filing evidence. The

landlord's agent has had an opportunity to review the tenant's evidence, however the landlord's case will have several witnesses and evidence to upload to the system.

The tenant's legal counsel opposed the adjournment.

The landlord's agent is the property manager for the rental unit and on behalf of the landlord, and I see no reason that he would wait from November 23 to December 5 to give it to the landlord or open it himself, and I declined to adjourn.

No further issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for recovery of all or part or double the amount of the pet damage deposit or security deposit?
- Has the tenant 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 under Section 51, moving expenses, loss of quiet enjoyment, aggravated damages, loss of services or facilities and payment of a prior judgment?

Background and Evidence

The tenant has provided a copy of a tenancy agreement specifying a fixed term tenancy beginning on May 1, 2015 and expiring on April 31, 2016 thereafter reverting to a month-to-month tenancy. Rent in the amount of $2,500.00 was payable on the 1st day of each month and the tenant testified that there are no rental arrears. On April 5, 2015 the landlord collected a security deposit from the tenant in the amount of $1,250.00 as well as a pet damage deposit in the amount of $1,250.00. The rental unit is the upper level of a side-by-side duplex with a basement suite on that side of the duplex.

The tenant further testified that the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property on May 16, 2016 but failed to sign it. The tenant told the landlord's agent that it was invalid, and disputed it. A hearing resulted, and the parties agreed that the tenancy would continue. A copy of that Decision has been provided for this hearing. It is dated June 29, 2016 and specifies that the parties agreed that the Two Month Notices to End Tenancy for Landlord's Use of Property, both dated May 13, 2016 were not issued in accordance with the *Act,* and that the remainder of the tenant's

claim is dismissed with leave to reapply. It also states that the tenant was entitled to a one-time reduction of $100.00 from a future rent payment in full satisfaction of the recovery of the filing fee. However, there was no future month of the tenancy, and the landlord has not reimbursed the tenant. The tenant did not get a monetary order from the Residential Tenancy Branch with the Decision to serve on the landlord, but it was ordered as a benefit to the tenant, and the tenant claims $100.00 from the landlord.

The landlord served another Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated June 28, 2016 and contains an effective date of vacancy of August 31, 2016. The reasons for issuing it state:

- 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);
- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant did not dispute the notice, but on August 4, 2016 gave the landlord 10 days notice to vacate by placing the notice in the landlord's mailbox and by sending a note via email.

The landlord gave the tenant the sum of $3,413.10, however recovery of the security deposit and pet damage deposit amounts to $2,500.00 and the landlord is required to pay compensation of one month's rent, and the landlord ought to have returned a total of $5,000.00, less 15 days rent for the month of August, 2016. The landlord reduced the amount payable to cover utilities amounting to $216.00 but would not provide copies of the utility bills despite requests by the tenant.

The landlord did not use the rental unit for either purpose specified in the Two Month Notice to End Tenancy for Landlord's Use of Property. The rental unit was re-rented to another tenant and neither the landlord nor the landlord's close family member moved in. The tenant spoke with the new tenant who confirmed that he moved in and lived there as early as October 23, 2016. The tenant also contacted the City and personnel advised the tenant that no permits had been issued for the rental property.

The tenant has also provided a receipt for the cost of moving expenses and testified that the landlord was well aware that the tenant did not want to move out, and secured another rental unit at a higher rent for a smaller unit. The tenant's new rental unit is

$2,950.00 per month, a difference of $14,253.23 over 2 years. The tenant claims $2,127.68 for moving expenses and $30,000.00 for aggravated damages due to the landlord serving the Notice, not in good faith, requiring the tenant to pay a much higher rent.

The parties had a verbal agreement that the landlord would care for the lawn, which he did until April when the landlord attempted to evict the tenant, and the tenant claims $200.00 for the loss of that service.

The tenant further testified that he was forced to move out, and the notice to end the tenancy given by the landlord was not given in good faith. The landlord then made it unbearable to stay. The parties had a lease and the tenant clearly communicated to the landlord that the tenant and family did not want to move. Once the landlord decided that the landlord no longer wanted to continue the tenancy, the landlord made it a living hell by failing to deal with a smoke detector in the vacant basement suite from April to July, which beeped every 3 minutes or so. It was audible in the tenant's living room and disturbed the tenant and family. The landlord's agent responded in May, but no one dealt with it until July. The landlord also used bullying tactics in an attempt to convince the tenant to sign a new lease and said repeatedly that if the tenant didn't sign a new one, the landlord would be forced to evict the tenant. It took a toll on the tenant and his family. The tenant claims $5,000.00 being half of the rent for 4 months due to the stress on his family.

The tenant has provided a Monetary Order Worksheet setting out the following claims as against the landlord:

- $5,000.00 penalty for not using the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property;
- $2,127.68 for moving expenses;
- $30,000.00 for aggravated damages;
- $216.00 for unsubstantiated utilities;
- $200.00 for discontinued yard care;
- $5,000.00 for loss of quiet enjoyment; and
- $100.00 for the previous RTB Judgment.

To keep the matter within the jurisdiction of the Residential Tenancy Branch, the tenant abandons the amount over $35,000.00.

The landlord's agent testified that he is a realtor and licensed property manager, but only manages 2 rental units.

Before the end of the first 1-year lease, the landlord's agent attempted to get the tenant to sign another tenancy agreement. During this tenancy, the owner's daughter lived in the basement suite but was rarely there so the landlord thought it would be reasonable for the tenant to pay for 100% of the utilities as opposed to 2/3 as originally agreed. In April, 2016 and for about a month the parties negotiated. The tenant was provided with a new lease but didn't respond until after the fixed term had expired. The tenant wanted to use the garage and made other suggestions, and wanted to screen new tenants for the basement suite. Things went downhill, and the tenant made demands and the owner was insulted. The tenant had no right to interfere.

The landlord's decision to issue the Two Month Notice to End Tenancy for Landlord's Use of Property was not an intention to re-rent, but to rent out the basement suite and have the landlord's daughter move into the upstairs rental unit. Instead of dealing with the tenant, the owners wanted their daughter to move in. The landlord's daughter wanted some renovations and the landlord's agent arranged contractors. However, while going through all of the process and getting the tenant to move out, the circumstances of the landlord's daughter changed, and the landlord didn't think it made any sense to leave the rental unit vacant and decided to not complete the extensive renovations they had planned, but wanted the landlord's agent to find another tenant. The landlord's agent advertised the rental unit for rent on Craigslist at the end of September, 2016 for $2,800.00, not including utilities. The rental unit was re-rented for November 1, 2016.

The landlord had some work done in the rental unit, such as some painting, replaced all carpet, refinished wood floors, but not the extensive work such as windows and a stacking washer and dryer.

The landlord did not make an application for dispute resolution claiming against the security deposit for unpaid utilities, but the landlord's agent sent the tenant an email specifying what utilities were owed by the tenant with copies of the bills attached, and then blocked the tenant's calls. The tenant has provided the email as evidence for this hearing, but not the attachments.

The landlord's agent further testified that the landlord returned to the tenant the sum of $3,413.10, being $1,250.00 for the security deposit; $1,250.00 for the pet damage deposit, $1,129.00 for 14 days of rent for August, 2016, less $216.00 for utilities. Other tenants have been tenants of the landlord for several years and without increasing rent,

and the tenant was asked to sign a new tenancy agreement without an increase in rent, so it's insulting to the landlord that the tenant refers to this as a "reno-viction," and asking the landlord to pay a rent differential is not reasonable.

Yard care is not a service provided for in the tenancy agreement. Once in awhile when convenient, the landlord had someone care for the yard while in the area, but the landlord was not obligated to do so.

The alarm in the basement suite was sounding due to a low battery. The landlord's agent did not have keys to the basement suite and the owner's daughter didn't know what to do about it. They hit a "re-set" button and then got a technician. The battery was changed but it sounded again and was eventually replaced. No one's safety was compromised. It was a mistake and it was dealt with.

With respect to the allegation of bullying tactics, the landlord's agent testified that the parties started to talk about a new lease in April, prior to the expiration of the fixed term, but had difficulty getting ahold of the tenant until after the tenancy reverted to a month-to-month tenancy. The owner did not want a month-to-month tenancy, and was forced to follow the procedure respecting giving a notice to end the tenancy.

According to the tenant's evidentiary material, the landlord was cordial till May, yet claims 4 months rent from April to August. Distress was caused by the tenant who created instability and said he was having stress with work and his spouse. The landlord's agent sent an email to the tenant suggesting that the parties not fight over it causing more stress.

Submissions of the Tenant's Legal Counsel:

The landlord's agent admitted that neither ground for eviction was followed through on. Through their agent, the landlords evicted the tenant without any follow-up and breached Section 51. The tenant had no choice but to move out.

The tenant's legal counsel also submits that the *Act* provides for a punitive penalty, however given that the landlords never intended to renovate or have their daughter occupy the rental unit, compensation for moving expenses can be greater than that provided by the *Act.* The statutory amount is punitive, but not exclusive, and compensatory damages should be awarded to give the same position to the tenant that he would have if the breach by the landlord had not occurred.

Submissions of the Landlords' Agent:

The rent would not have increased if the tenant had agreed to sign a new lease, but he didn't sign it so it was never agreed to. The owners didn't want him as a tenant anymore and decided to change the situation and the landlord's agent had to follow all lawful instructions.

In the opinion of the landlord's agent, usually a tenancy agreement is mutually respectful and the *Residential Tenancy Act* is meant to protect people from being taken advantage of, but is not meant to take advantage of landlords. There should be consideration as to what is right and what is not. It is very insulting to call it a "reno-viction," and there should be a law against a nuisance tenant.

The tenant submits that the evidentiary material shows that the landlord's agent was not professional, but bullied and threatened the tenant many times. The tenant told the landlord's agent that the first notice to end the tenancy was not valid, but he laughed at the tenant in his text messaging. As soon as the landlord was unhappy, the alarm was left sounding and yard care stopped. The landlord knew that the tenant did not want to move out, and the tenant still lives in the same neighbourhood.

Analysis

Firstly, with respect to the security deposit and pet damage deposit, the *Residential Tenancy Act* is very clear; a landlord must repay all of such deposits 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 the deposit(s) within that 15 day period, unless the tenant otherwise agrees in writing. If the landlord fails to do so, the landlord must repay double the amount(s). In this case, the landlord withheld $216.00 for utilities, without the written consent of the tenant and without an order of the director. I find that the tenancy ended on August 17, 2016 and the parties agree that the landlord received the tenant's forwarding address in writing and the landlord returned $3,413.13 to the tenant. I find that since there is no claim for damages caused by a pet, the amount returned to the tenant included the $1,250.00 pet damage deposit.

I refer to Residential Tenancy Policy Guideline # 17 – Security Deposit and Set-off which states that I must double the amount of the security deposit and deduct from that the amount returned to the tenant. I find that the tenant has established a monetary

claim of $336.87 ($1,250.00 security deposit x 2 = $2,500.00. $3,413.10 - $1,250.00 pet damage deposit = $2,163.10. $2,500.00 - $2,163.10 = $336.90).

Having found that the effective date of the tenant's notice to end the tenancy is changed to August 17, 2016, the tenant was bound by law to pay rent for the month of August for 17 days, which equates to $1,370.97 ($2,500.00 / 31 X 17 = $1,370.97). The landlord still had the obligation to provide to the tenant the equivalent of 1 month's rent, which is $2,500.00. The difference is $1,129.03, and I find that the landlord is indebted to the tenant that amount.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

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

The *Act* also specifies that if a landlord does not use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must pay additional compensation to the tenant. The previous legislation specified double the amount of the monthly rent and effective May 17, 2018 the legislation was changed to provide for 12 months rent. There are no "unless" factors, but the *Act* says "must." The parties agree that the landlord didn't use the property for the landlord or a close family member to reside in or to make substantial renovations that required the rental unit to be vacant, and therefore I find that the tenant has established a claim. I also find that the landlord ought to have used the rental unit for the months of September, 2016 through February, 2017, unless extenuating circumstances exist. A change in the circumstances of the landlord's daughter is not an extenuating circumstance. The legislation changed in May, 2018 and the tenant did not make the application until 2 years after the tenancy ended. In the circumstances, I find that the provisions of the earlier legislation apply, and I grant a monetary order of $5,000.00.

With respect to moving expenses, I agree with the landlord's agent that the compensation required under the *Act* is meant to cover moving expenses. However, I also consider the submissions of the tenant's legal counsel that the statutory requirement is the punitive damages, which I cannot order, but any damage or loss suffered can be ordered to be in addition to the statutory amount under Section 67 of

the *Act.* There is no evidence before me to justify any greater amount other than to punish the landlord, and I dismiss that portion of the tenant's claim.

The tenant also claims $30,000.00 for aggravated damages. It is clear in the evidence that the owners simply did not want to deal with the tenant and wanted him out. However, I also find that the amount claimed is excessive. The tenant testified that the rent differential for the last 2 years amounts to $14,253.23, and has provided a calculation of a difference in rent of $450.00 per month ($2,950.00 - $2,500.00 = $450.00). The tenant was in a position to make this application as soon as he discovered that a new tenant had moved into the rental unit, which was in October, 2016. In the circumstances, beyond the sanctions set out in the *Act,* I find that the tenant has established the rent differential for 8 months, from September, 2016, or $3,600.00. With respect to further aggravated damages, the landlord's agent testified that the tenant made numerous demands in the negotiations for a new fixed term tenancy agreement which insulted the landlord, and the tenant did not dispute that. Having read the emails and other evidentiary material, I am not satisfied that the tenant mitigated any further damage or loss.

With respect to discontinued lawn care, I have reviewed the tenancy agreement and there is no specification that the landlord was obligated to provide that service. The tenant testified that the lawn care stopped in April, however I am not satisfied that the landlord had any obligation to do so and I dismiss that portion of the tenant's claim.

With respect to loss of quiet enjoyment of the rental unit, I have reviewed all of the evidentiary material, including the digital evidence, text messages, emails and letters. A landlord has an obligation to provide a tenant with quiet enjoyment of a rental unit, and leaving a smoke alarm to sound for months, even after receiving several indications from the tenant, is simply not acceptable, and I find that the landlord did so in an effort to force the tenant to move out. The tenant claims $5,000.00, which is equal to 2 months' rent. I find that half a months' rent for 4 months is reasonable, and I grant a monetary order in the amount claimed.

With respect to recovery of the filing fee from a previous hearing, it is not up to me to determine whether or not the tenant should receive a monetary order. The Decision shows that the parties settled the dispute on terms which included a one-time deduction from future rent payable in the amount of $100.00. I was not at that hearing, and do not have any evidence with respect to the settlement discussions. It is up to the tenant to apply for a correction or clarification pursuant to Section 79 to receive such an Order for

enforcement, not for me to attempt to decipher the intent of the parties at that time, and I dismiss that portion of the tenant's claim.

However, since the tenant has been partially successful with this application, the tenant is entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $15,165.93.

This order is final and binding and may be enforced.

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: December 22, 2018

Residential Tenancy Branch