Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, OLC, PSF, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord 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.

As the tenants confirmed that they received the landlord's 4 Month Notice placed in their mailbox by the landlord on March 13, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on Mach 28, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Since the parties agreed that this tenancy ended when the tenants vacated the rental unit and returned their keys by registered mail on April 28, 2019, the tenants withdrew their application to cancel the 4 Month Notice. The tenants' application to cancel the 4 Month Notice is hereby withdrawn. Since the tenancy is over, there is also no need to consider those portions of their application such as the provision of services and facilities and orders that the landlord comply with the *Act*, that would only have an impact in the event that this tenancy were to continue.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or other money owed during the course of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord? Should any other orders be issued with respect to this tenancy?

Background and Evidence

In October 2014, the tenants and the owner of this property signed a one year fixed term Residential Tenancy Agreement (the Agreement) for the upstairs unit in a three unit rental property that was to cover the period from November 15, 2014 until November 30, 2015. Monthly rent was set at $1,600.00, payable in advance on the first of each month, plus 40% of the hydro for this rental property. The landlord continues to hold the tenants' $800.00 security deposit and $200.00 pet damage deposit (the deposits) paid when this tenancy began.

On June 26, 2018, the landlord posted a Notice to End Tenancy on the tenants' door, seeking an end to this tenancy by August 31, 2018. In my August 10, 2018 decision, I outlined the landlord's attempt to end this tenancy at that time as follows:

...The landlord said that she was taking action to end this tenancy because of the action taken by the municipality requiring renovations to restore this building to use as a duplex. Although she realized that a 1 Month Notice to End Tenancy for Cause could be issued to the tenants, she believed that it was more fair to give the tenants an additional month to end their tenancy. For that reason, the landlord used a standard RTB 4 Month Notice to End Tenancy form and blacked out the references to 4 Months in the form, replacing it with handwritten notations indicating that this was a "2" Month Notice. The Notice to End Tenancy identified August 31, 2018 as the effective date when this Notice to End Tenancy was to take effect.

In their written evidence, the tenants alleged that the landlord had improperly revised the 4 Month Notice form to make it appear that the tenants only had two months to end their tenancy. The tenants also provided written evidence disputing that the landlord had all necessary approvals in place and that the renovations required did not necessitate their permanent removal from the rental unit...

As I was not satisfied that the landlord had all of the required permits in place to end the tenancy at that time and the landlord had tried to modify the Residential Tenancy Branch's Approved Form for ending this tenancy, I allowed the tenants' application. The tenancy continued and the landlord's Notice to End Tenancy was of no legal effect.

On March 13, 2019, the landlord issued a properly completed 4 Month Notice, and attached a copy of the permit obtained from the municipality to enable the landlord to undertake repairs and renovations so extensive as to require the premises to be vacated. The effective date on that 4 Month Notice was July 31, 2019.

Shortly after sending the tenants the 4 Month Notice, the landlord sent the tenants a text message stating that the owner of the property would be willing to end this tenancy even earlier and would provide additional compensation beyond what was legally required in that event.

The tenants sent the landlord an email on March 20, 2019, advising the landlord that they were ending their tenancy by May 1, 2019. The tenants also informed the landlord at that time of their intention of pursuing a monetary claim against the landlord for their losses arising out of this tenancy. In that emailed letter, a copy of which was entered into written evidence by the tenants, the tenants requested "one month of free rent and compensation in the amount of $3,000 for moving expenses, financial hardship and undue stress, plus hydro payments that were not our responsibility, plus our damage deposit and pet deposit in the amount of $1,000.00 to be paid to us upon the end of our tenancy." In their letter, they cited the following alleged violations of their Agreement:

1. Unannounced visits
2. Not providing proper receipts/or bills for the utilities
3. Allowing contractors to begin renovations before the scheduled date
4. Consistently serving us with eviction notices
5. Harassment

The tenants did not complete a Monetary Order Worksheet to support their application for a monetary award of $3,000.00, or any other breakdown of how they arrived at this

figure. At the hearing, the tenant described the following components of their claim; many of which were only finalized after they received the bills related to their move:

Moving Costs	$756.00
Purchase of Boxes for Moving	$246.00
Purchase of Packing Supplies	$80.00

The tenant said that another component of their claim for a monetary award was for the landlord's harassment and traumatization of the tenants who did not expect to receive another notice to end this tenancy after the August 10, 2018 decision regarding the landlord's previous attempt to end this tenancy proved unsuccessful. At the hearing, the tenant and their legal counsel noted that they were also seeking a monetary award for aggravated damages. They agreed that no mention of this portion of the claim was included in their application, nor was there any clear indication of this request in their written evidence.

At the hearing, Tenant SA (the tenant) also said that they had incurred $125.00 in bank charges to put stop payments on post-dated cheques issued to the landlord. The tenant confirmed that they had not provided any receipts to confirm these losses, had not included specific reference in their application to these charges and had not sent the landlord a written request to return these cheques. The landlord testified that it had always been their intention to return these uncashed cheques to the tenants along with their deposits.

Tenant DP said that the landlord had unfairly charged the tenants for all of the hydro costs in this three unit rental property since mid-November, when the other two tenants in this building vacated their rental unit. Both tenants gave sworn testimony that they understood from the Agreement that they were only to be held responsible for 40% of the total hydro costs for this property, whether or not the other two units were occupied. The landlord gave sworn testimony that the owner of the property drafted the wording of the Agreement pertaining to the tenants' responsibility for 40% of the hydro costs, assuming that the bottom two units would continue to be rented and would pay 30% each towards the total hydro costs for this rental home. The landlord provided written evidence that the tenant's hydro bills remained roughly the same after the downstairs tenants vacated the rental home and the tenants were the sole tenants continuing to live there.

At the hearing, I asked the tenants to attempt to calculate the amount of their overpayment of hydro bills for the period from mid-November when they were the only ones living in this home until February 28 2019, the date of the last bill they have

received. After some time, Tenant DP was able to calculate the amount of their alleged overpayment of hydro over this period as $783.00, which they said represented 60% of the total hydro costs of the property over this period. The landlord did not dispute Tenant DP's calculations of the amount of the overpayment; although the landlord restated that the landlord did not believe the tenants were entitled to their requested monetary award for this item.

The landlord gave undisputed sworn testimony that a new hydro bill had been received by the landlord for hydro owing from February 28, 2019 until April 30, 2019. The landlord testified that the tenant's portion of the $301.70 bill would be $120.68, based on the tenants' responsibility for 40% of the overall hydro costs for this property. Although the landlord said that they had sent the tenants a copy of this bill, the tenant denied having received it. The tenants did not dispute the amount requested by the landlord for the outstanding hydro bill from February 28, 2019 until April 30, 2019.

The tenants gave undisputed sworn testimony that no joint move-in condition inspection was undertaken at the beginning of this tenancy and, as such, no joint move-in condition inspection report was created by the landlord or the landlord's representatives. The landlord, who manages this property for the owner of this property, testified that they were not involved with this property when this tenancy began.

The landlord gave undisputed sworn testimony that the tenants refused to participate in a joint move-out condition inspection at the end of this tenancy. Tenant SA (the tenant) said that the tenants moved out of this rental unit on April 13, 2019, sending the keys to the rental unit to the landlord by registered mail on April 28, 2019. The landlord testified that they received the keys from the tenants by registered mail on May 2, 2019; the tenant testified that the Canada Post Online Tracking Records show that the keys were received by the landlord on May 1, 2019.

The landlord confirmed that they received the tenants' forwarding address by email on April 30, 2019. Although this is not the correct way for tenants to provide their forwarding address to landlords, based on the landlord's sworn testimony the landlord did have the tenants' forwarding address as of April 30, 2019.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, receipts, invoices, documents, emails, text messages, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

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. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord contravened the *Act* and that the landlord is responsible for losses the tenants suffered as a result of this contravention.

As was mentioned during the hearing, I find the tenants' claim for a monetary award was difficult to assess because the tenants failed to provide any meaningful summary of how they arrived at the $3,000.00 they were claiming. They offered no Monetary Order Worksheet or even a general breakdown of how they arrived at this figure. When asked to identify the component parts of their claim for this monetary award, the tenants encountered difficulty in doing so.

The following portions of section 50 and 51 of the *Act* have a bearing on the tenants' eligibility for compensation after receipt of the 4 Month Notice from the landlord:

> ***50*** *(1)If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property]..., the tenant may end the tenancy early by*
>
> > *(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and*
> >
> > *(b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.*
>
> *(2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.*

(3)A notice under this section does not affect the tenant's right to compensation under section 51 [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 after 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

(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 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...

In this case, the parties agreed that the tenants non-payment of rent for April 2019 was intended to address the landlord's responsibility pursuant to section 51(1) of the *Act* to compensate the tenants with the equivalent of one month's rent for the issuance of the 4 Month Notice. Although the tenants did not provide their notice to end this tenancy by May 1, 2019, in writing, I find that the behaviour of the parties confirmed that the landlord accepted the tenants' emailed notice to end tenancy early pursuant to paragraph 50(1)(a) of the *Act.*

No other provision for monetary compensation is established pursuant to the *Act* to enable tenants to recover their costs associated with moving. There is nothing in my decision of August 10, 2018 that prevented the landlord from issuing a new 4 Month Notice on the proper RTB form once the required approvals for renovations and repairs had been obtained from the municipality. The primary reason cited in the August 10, 2018 decision setting aside the landlord's previous attempt to end this tenancy was that the landlord's application was premature at that time. Once the landlord obtained the necessary approvals and permits from the municipality there was no obstacle preventing the landlord from taking action on March 13, 2019 to end this tenancy for landlord's use of the property for repairs and renovations that were so extensive as to

require the premises to be vacated. For this reason, I dismiss the tenants' application for the recovery of their moving expenses without leave to reapply. Although this has no bearing on my decision, I also note that these expenses had not even been incurred at the time that the tenants applied for their monetary award.

I have also considered the tenants' claim that the landlord's offer of additional compensation should the tenants decide to vacate the rental unit earlier than the July 31, 2019 date stated on the 4 Month Notice constituted some form of harassment of the tenants and cause for monetary compensation. I find that this interaction was by no means harassment of any kind, but an offer of additional compensation beyond what is required under the *Act* as a means of facilitating a resolution of this matter without requiring a formal ruling by an arbitrator appointed pursuant to the *Act*. I also dismiss this portion of the tenants' application without leave to reapply.

Since the tenants provided no proof that the landlord had refused their request to return their postdated cheques nor any proof of costs incurred in cancelling payment on these cheques, I dismiss this element of the tenants' application as well.

I have also considered the tenants' assertion that their Agreement only required them to pay 40% of the hydro costs for this rental home. Once the other tenants in the bottom two units vacated the rental home, the landlord directed the entire hydro bill for this property to the tenants, claiming that they were the only ones then using hydro in this building. While the landlord no doubt assumed that this was an equitable way of looking after the hydro bills once the tenants in the bottom two suites were gone, the parties gave contradicting testimony with respect to their understanding of the hydro terms of the Agreement. Since the owner of the property used a standard Agreement to establish this tenancy and added the term that the tenants were responsible for 40% of the hydro costs for the property into that standard Agreement, it is the person who drafted the wording that becomes responsible for any lack of clarity in this portion of the Agreement. As it is unclear as to whether the tenants' hydro payments were to remain 40% of the total costs in the event that no one was living below them, I find that a literal reading of the Agreement is required. As such, and as the landlord becomes responsible in this case for any ambiguity in the wording of this provision of the Agreement, I allow the tenants' claim that they have been overcharged for their hydro costs from mid-November 2018 until February 28, 2019.

Estimating the amount of the tenants' overpayment of hydro costs became problematic because the tenants had not adequately outlined the component parts to their claim for a monetary award. During the course of the hearing, Tenant DP was able to provide a

calculation of the amount of overpayment of hydro bills from November through February 28, 2019. As Tenant DP's estimate of $883.00 for this period was not disputed by the landlord, I allow a monetary award in this amount in the tenants' favour for the landlord's overcharging of hydro costs for the period between the departure of the downstairs tenants and February 28, 2019, the last date for hydro bills already paid by the tenants.

I reduce the amount of the tenants' monetary award for overcharged hydro bills by $120.68, the amount cited as owed by the tenants for 40% of their final hydro bill for the period from February 28, 2019 until the end of their tenancy. The tenants did not dispute this calculation provided by the landlord during this hearing.
In considering this matter, I have also given consideration to RTB Policy Guideline 16, which provides guidance to arbitrators when considering an application for a monetary award for losses or damages. Policy Guideline 16 reads in part as follows:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided...

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.*

- *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

In this case, both the tenant and the tenants' legal counsel confirmed that the tenants have not specifically requested aggravated damages in their application. As I find that the tenants failed to identify their claim as one for aggravated damages, I dismiss the tenants' application for a monetary award for harassment and traumatization without leave to reapply. I find there is no basis for concluding that the landlords actions in

issuing a second notice to end this tenancy for legal grounds available to the landlord following the unsuccessful route taken in 2018 is well within the landlord's rights. The tenants have not met the burden of proof required for a finding that the landlord has infringed their rights nor has satisfactory proof been provided of harassment that would warrant the issuance of any type of monetary award for damages against the landlord

As discussed at the hearing and pursuant to sections 23 and 24 of the *Act*, the landlord's right to retain the tenants' deposits or even apply to retain them was extinguished in 2014, when no join move-in condition inspection was conducted nor a report provided to the tenants. Since the landlord confirmed having received the tenants' keys by registered mail on May 2, 2019, and haveg received the tenants' forwarding address on April 30, 2019, the landlord is already aware that they must return the tenants' deposits in full within 15 days of May 2, 2019. Given the date of this hearing and the issuance of this decision, I informed the parties that I would be including an order that the landlord return the tenants' deposits in full as part of this decision, so as to avoid the incurrence of any additional hearing and application costs by either party in this matter.

As discussed, I also order the landlord to return any and all post-dated rent cheques still in the landlord's possession along with the tenants' deposits.

As the tenants have been partially successful in this application, I allow them to recover their filing fee from the landlord.

The remainder of the tenants' application is withdrawn, as this tenancy has ended and there is no need for determinations on matters that would only be relevant were the tenancy to continue.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover hydro payments and the filing fee for their application, less the amount of unpaid hydro bills outstanding, and to obtain a return of their security and et damage deposits:

Item	**Amount**
Recovery of Overpayments for Hydro	$783.00

Less Outstanding Hydro Bill	-120.68
Plus Return of Pet Damage and Security Deposits ($200.00 + $800.00 = $1,000.00)	1,000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$1,762.32**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.
I also order the landlord to return any and all of the tenants' uncashed rent cheques that the landlord has in their possession arising out of this tenancy.

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 06, 2019

Residential Tenancy Branch