Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, FFL
Tenant: MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant seeks a monetary order for damage or compensation under the Act in the amount of $11,474.80, and recovery of the $100.00 Application filing fee. The Tenant's claim is based on the assertion that the Landlord ended the tenancy, because the residential property was going to be demolished; however, the Landlord sold the property and it was not demolished, but rather, it was re-rented.

The Landlord filed a claim for a monetary order for damages in the amount of $290.85 for cleaning costs, claiming against the Tenant's security deposit.

Both Parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other Party and to make submissions to me.

As both Parties filed applications and these were scheduled to be heard at the same time, service of the applications and Notice of Hearing is not in issue. In the hearing, both Parties confirmed having received the other's application and documentary evidence, and having had time to review it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that they had no written tenancy agreement; however, they agreed that they had an oral tenancy agreement that began on July 1, 2013, with a monthly rent of $900.00, due on the first day of each month. They agreed that the Tenant paid $970.63 per month at the end of the tenancy. The Parties agreed that the Tenant paid the Landlord a security deposit of $450.00 and no pet damage deposit for the tenancy.

The Parties agreed that they did not do a move-in or move-out inspection of the condition of the rental unit, nor did the Landlord prepare a condition inspection report.

The Tenant said she gave the Landlords her forwarding address and her authorization to use the security deposit for cleaning. However, she said the Landlords “spent $100 to dispute it when they didn’t have to. There was no need to file a claim, so why should I have to pay their filing fee? My forwarding address was a handwritten note that I hand delivered to their door, I attached all keys to the property including post box key.” The Parties agreed that the Tenant provided the keys and her forwarding address to the Landlords in writing on January 31, 2019.

The Parties agreed that the Landlords served the Tenant with a 4 Month Notice to End Tenancy for Demolition dated September 26, 2018, with an effective vacancy date of February 1, 2019. The Notice was signed by the Landlord, dated, states the ground for the eviction as demolition of the rental unit, and is in the approved form, #RTB-29.

Landlords’ Claim

The Landlords seek $290.85 in cleaning costs from the Tenant, as they said there were

drawings on the walls, dirty carpets, dirty window sills, and a mouldy bathroom. The Landlords said they got an estimate from a national cleaning company who charged $150 per hour for a Saturday; however, they said they found someone to do it for $40.00 per hour. The Landlord said they cleaned the drawings on the walls and had to buy cleaning supplies. They said they are not claiming for things that were broken or missing, but only the cleaning supplies and the work done, which they said came to $290.85.

The Landlord submitted before and after cleaning photographs of the drawing on walls throughout the rental unit and receipts for the cleaning products purchased.

The Landlords submitted a Monetary Order Worksheet, as follows:

	Receipt/Estimate From	For	Amount
1	[local store]	Lacquer thinner	$ 11.36
2	[National grocery store]	Cleaning supplies	$ 47.52
3	[National hardware store]	Cleaner	$ 11.97
4	Landlord's labour	Cleaning wall graffiti 3 hours at $30.00/hour	$ 90.00
5	Hired cleaner	Cleaning house 3.25 hours at $40.00/ hour	$130.00
		TOTAL	**$290.85**

The Tenant said she authorized the Landlords to use her security deposit for any cleaning they wanted to do. The Tenant said she had a four-month old baby to take care of when it was time to move out, "so no, I didn't clean. I gave them permission to do it and I paid them to do it, so give me my $159.15" of the remaining security deposit. However, the Tenant did not apply for the return of her security deposit.

Tenant's Claim

The Parties agreed that the Landlords did not demolish the residential property, but they sold it to a developer on February 4, 2019. The Landlords said the developer was buying properties on the street, which they wanted to demolish in order to build a subdivision, which is why they gave the Notice for demolition. The Landlord said that the

Tenant knew all along that they were selling the property for demolition. The Tenant said that the Landlords should have used the right form for sale of the property, but instead, they gave her notice of the end of the tenancy, pursuant to section 49(6) of the Act:

> (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
>
> (a) demolish the rental unit.

The Landlords further stated that the developer has had to rent the property out, because it might take six months to get a demolition permit and the developer would have to pay taxes if the property was left empty during this time. The Tenant said that she could have been still living there, if the Landlord had followed the Act properly.

The Tenant is claiming 12 times the monthly rent, pursuant to section 51(2)(a) of the Act, because as the Act states: “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”.

Analysis

Landlords’ Claim

Section 37(2)(a) states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Tenant admitted to not having fulfilled her obligation in this regard. However, section 38 of the Act states:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with

the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Pursuant to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Subsection 35(2) requires a landlord to offer a tenant "at least 2 opportunities, as prescribed, for the inspection." "As prescribed" means as prescribed by the Residential Tenancy Regulation (the "Regulation"). Section 17(2) of the Regulation states that if the tenant is not available at the time first time offered that the landlord must propose a second opportunity to the tenant in writing in the "approved form".

The "approved form" is RTB form #RTB-22 "Notice of Final Opportunity to Schedule a Condition Inspection". A landlord is required to use this form to give the tenant a second opportunity to participate in the move-out condition inspection.

If a landlord does not provide the tenant with this written notice of the second opportunity, the landlord's right to claim against deposit(s) for damage to the rental unit is extinguished pursuant to section 36(2)(a).

In the case before me, the Landlords did not comply with the requirements of the Act and Regulation in offering the Tenant the opportunity for an inspection of the condition of the rental unit. As a result, they extinguished their right to claim for damages against the security deposit.

Further, if the Landlords believed the rental unit was going to be demolished, I find it unreasonable to require it to be as clean as they insisted it should have been at the end of the tenancy. Based on the evidence, the Act and the Policy Guidelines and common sense, I dismiss the Landlords' claim for damages without leave to reapply.

Tenant's Claim

Pursuant to section 51 of the Act, if a landlord gives a tenant notice to end the tenancy under section 49 of the Act, the Landlord has to pay the tenant an amount equal to twelve times the monthly rent, if steps have not been taken within a reasonable time to accomplish the stated purpose of the notice.

Residential Tenancy Policy Guideline 50 ("PG #50") addresses compensation for ending a tenancy for landlord's use. Regarding the landlord's responsibility to accomplish the purpose for ending the tenancy, PG #50 states:

> **Accomplishing the Purpose/Using the Rental Unit**
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> Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.
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> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.
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> A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

The Landlords' testimony is unequivocal – they never intended to demolish the rental unit themselves, yet this was the reason for which they evicted the Tenant. Further, the rental unit has now been re-rented by the purchaser, and as the Tenant said, she could possibly have been the purchaser`s tenant at this time, if the tenancy had not been ended for demolition. Accordingly, I find the Tenant is successful in her Application, and I award the Tenant 12 times the monthly rent payable under the tenancy agreement or $970.63 x 12 = $11,647.56. I also award the Tenant recovery of the $100.00 filing fee for a total award of **$11,747.56**.

The Landlords' application is dismissed without leave to reapply.

Conclusion

The Landlords' application for recovery of cleaning costs is dismissed without leave to reapply, because it is unreasonable and inconsistent with the 4 Month Notice they served the Tenant to clean a rental unit that is going to be demolished.

The Landlords issued a 4 Month Notice to End Tenancy for Demolition of the rental unit; however, the rental unit was not demolished. Accordingly, pursuant to section 51(2) of the Act, the Tenant is awarded twelve times the monthly rent under the tenancy agreement in the amount of $11,647.56. Given her success in the application, I also award the Tenant recovery of the $100.00 Application filing fee.

The Tenant's claim for recovery of twelve time the monthly rent is successful in the amount of $11,647.56. The Tenant is awarded recovery of the $100.00 filing fee for this Application from the Landlord.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$11,747.56.**

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 20, 2019

Residential Tenancy Branch