Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's March 24, 2019 application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; 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 landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail well in advance of this hearing, 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*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or other money owed arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective

submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties entered into a one-year fixed term Residential Tenancy Agreement (the Agreement) for a studio suite in the landlord's property on May 1, 2013. When the initial fixed term expired on April 30, 2014, the tenancy continued as a month-to-month tenancy. When the tenancy first began, monthly rent was set at $500.00, payable in advance on the first of each month. Within months of this tenancy beginning, the parties agreed that the tenant could use an additional bedroom in this property, which increased the monthly rental to $595.00. Although the tenant paid a pet damage and security deposit (the deposits) when this tenancy began, the parties agreed that the issue of the deposits was dealt with on another occasion by an Arbitrator appointed pursuant to the *Act,* and forms no part of the current application.

This tenancy ended on the basis of a notice to end tenancy the tenant's relative handed to the landlord on the tenant's behalf on June 30.2018. The tenant advised the landlord at that time that they were planning to vacate the rental unit by July 31, 2018. The tenant actually vacated the rental unit by June 16, 2018. The parties participated in a joint-move-out inspection of the premises on June 17, 2018, accompanied at the tenant's request by a police officer present to keep the peace. The tenant said that they surrendered the keys to the rental unit and vacant possession on June 16, 2018; the landlord said that this occurred on June 17, 2018. This difference in testimony has no real bearing on the matters before me.

The tenant's application for a monetary award of $1,390.00 sought the recovery of the equivalent of the last two months of rent the tenant paid the landlord. In the Monetary Order Worksheet the tenant submitted into written evidence, this requested award was described as compensation for "mental anguish" caused by the landlord's "emails, letters and audio." In their application for dispute resolution, the tenant described their reasons for seeking this monetary award in the following terms:

Loss of quiet enjoyment and mental anguish Failing to comply with the Tenancy Act Going against my rights - includes but not limited to restricting and banning my visitors without reasonable cause Harassment, bullying and intimidation directed at not only towards myself but family as well. As well as violation of my rights. It was so intolerable I could not stay in the suite for the last 3 months of tenancy. I am asking $1390.00, which is 2 months rent

The tenant provided written evidence and sworn testimony that the landlord's actions and behaviours affected her existing anxiety issues and prevented her from staying in the rental suite for the final three months of their tenancy.

This $595.00 monthly rental remained in place until May 2018, when the landlord claimed that the tenant sent them an email, the contents of which the landlord read into the record of this hearing, in which the tenant noted that they were receiving additional funding, and were able to pay an extra $100. 00 for their monthly rent. The tenant paid $695.00 in monthly rent for May, June and July 2018, the final three months of their tenancy. The tenant gave sworn testimony that this additional $100.00 in monthly rent was required by the landlord, and was increased without legal authorization to do so.

At the hearing, I noted that the tenant had identified in their written evidence that the landlord had increased the rent in the final stages of this tenancy beyond the amount allowed by the legislation. Since this was not part of the tenant's application for dispute resolution, I refused to consider this as part of the matters properly before me, as the landlord had not been properly notified of the tenant's intention to seek a monetary award for this issue when the tenant applied for dispute resolution.

The tenant submitted a great deal of written documentation for consideration as part of their application. Some of this was colour-coded; other parts colour-coded and numerically referenced, and in other parts the tenant attached comments and observations regarding interactions between the landlord and the tenant, the tenant's family and friends.

The landlord entered into written evidence a detailed response in which they commented on many of the tenant's allegations. The landlord maintained that the tenant's problems were "self-inflicted grief" and were "baseless."

The tenant seemed to be under the impression that each and every transgression, however minor, constituted justification to obtain a monetary award from the landlord. By way of example, the tenant testified that the landlord did not provide them with an alternate emergency contact phone number where someone other than the landlord could be reached in case of an emergency. Since the Agreement signed by the parties clearly identified an emergency contact number, I asked the tenant to clarify this allegation. The tenant responded that the landlord was not always at that number and that the landlord was remiss in not providing some other emergency contact number in the event that the landlord was not there.

The tenant also submitted written evidence, which the tenant maintained demonstrated that the landlord believed that the tenant's male friend had stolen a bike from the landlord's property. However, the wording of this email reveals no such allegation; instead the tenant has made their own inferences from the contents of the landlord's email.

The tenant maintained that the landlord was unfairly monitoring the comings and goings of the tenant's male friend, and that the landlord had barred that friend from visiting the tenant at their rental unit. The tenant entered into written evidence copies of emails in which the tenant took offence to the landlord's reporting of times and dates when the tenant's male friend had visited the rental unit. The landlord confirmed that they sent a March 8, 2018 email which included the following information related to the tenant's male friend:

...And please, your boyfriend cannot be here that often and he should be blocking my driveway when he comes in...

The landlord said that they did not prevent the tenant's male friend from visiting the tenant, but merely observed in that email that this was happening more frequently than the landlord preferred.

Although the tenant said that there were also oral reminders that had the effect of limiting the number of times when the tenant could have their male friend visit them, the tenant confirmed that the only other time where there was a record of the landlord trying to impose such restrictions on the tenant's male friend arose at the end of this tenancy. The landlord provided written instructions that neither the male friend or anyone else could accompany the tenant in the joint move-out condition inspection.

The tenant maintained that the landlord entered the tenant's rental unit without giving the required 24 hours of written notice. The landlord said that they sent emails or spoke with the tenant before any of these inspections. The tenant said that on one occasion, the landlord burst into the rental unit without providing any notice whatsoever. The tenant estimated that these inspections happened on an annual basis, and that during the final year of the tenancy there were two such inspections.

Both parties described the other's evidence at the hearing as frought with mistruths and without a basis in fact.

Many of the issues identified and incidents that form part of the tenant's lengthy evidence submission involve the move-out process. By that time, it would seem that both parties were having difficulty dealing with one another.

A number of the tenant's evidence submissions and the landlord's written response involved the process followed at the joint move-out condition inspection and the results of that inspection. As this led to issues involving the return of the deposits, these incidents, although clearly troubling to both parties, have little bearing on the matters before me.

Analysis

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 tenant to prove on the balance of probabilities that the landlord contravened the *Act* and that they suffered a loss in the value of their tenancy as a result of these contraventions.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment of the rental premises in the following ways:

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I should first state that although the tenant supplied volumes of evidence and an extensive and detailed description of this evidence, I found it most difficult to follow how the grievances the tenant identified were of sufficient magnitude to constitute contraventions of the *Act* that would entitle the tenant to a monetary award for the loss of either the value of their tenancy or their loss of quiet enjoyment of the premises. It would seem that by the end of this tenancy both parties had become exasperated with one another. While these incidents may have increased the tenant's pre-existing anxieties, this on its own does not equate to mental anguish for which the landlord is in any way responsible.

While the tenant has identified some deficiencies in the landlord's interactions with the tenant, I see little evidence that the magnitude of these deficiencies was of such a scale that would have warranted a reasonable person to have opted for not staying in the rental unit for the final three months of this tenancy. The tenant has not provided any medical information to support their assertion that they suffered mental anguish as a result of interactions with the landlord. The tenant presented the problems that they encountered with the landlord in the final phases of this tenancy as being solely the landlord's responsibility. I find just as much evidence that the tenant was also responsible for many of these unsatisfactory interactions and appear to have been exacerbated, as the landlord maintained by the tenant's lack of success in obtaining a full return of their deposits for this tenancy in the tenant's earlier application to the Residential Tenancy Branch.

The tenant has identified a number of areas where the landlord has not necessarily complied with the *Act*. For example, landlords are supposed to provide 24 hours written notice to tenants on every occasion when an inspection of the rental premises is requested. By the landlord's own admission, such notices were given either orally or by email, which the tenant found disconcerting. Similarly, a landlord cannot restrict a tenant from having visitors to their rental unit. If a tenant is disrupting the quiet enjoyment of other occupants in a rental property, or significantly interfering with or unreasonably disturbing a landlord or other occupant of the building, then a landlord has the option of issuing a warning letter, and if necessary, a 1 Month Notice to End Tenancy for Cause. Informing the tenant, as did the landlord in their March 8, 2018 email that the tenant could not have the visitor of their choice come to the rental unit "that often" interferes with the tenant's legal rights. Another example where the landlord has overstepped their legal authority was in insisting that the tenant could not have anyone accompany them at the joint move-out condition inspection. Even though the

tenant had notified the landlord that they had removed their possessions from the rental unit, the tenant had still paid their rent until the end of July 2018, and could attend the rental unit with the person or persons of their choice for the purpose of a legally arranged joint move-out condition inspection. I also note that the tenant was under no legal obligation to return the key to the rental unit until July 31, 2018, the final date when rent had been paid to secure their occupancy of the premises, or before the commencement of the joint move-out condition inspection.

I find that there are grounds to allow a monetary award to the tenant pursuant to sections 28 and 65 of the *Act* as outlined above as all of the above-noted situations constitute contraventions of the *Act*. However, I find that these contraventions were relatively minor. I do not find that they warrant the magnitude of the monetary award the tenant has claimed, the recovery of two month's rent. Many of these issues were not even raised with the landlord until after the tenant submitted their notice to end tenancy; some did not get raised until the move-out inspection and afterwards.

Under these circumstances, I find on a balance of probabilities that a more reasonable amount of monetary award for the contraventions of the *Act* that have occurred is a more nominal amount of $150.00. This results in an award of $50.00 for each of the three main areas where the landlord has been deficient (i.e., the failure to provide written notices of inspections; the interference with the tenant's ability to have guests visit them in the rental unit; and the problems that arose at the end of this tenancy with respect to the restrictions placed on who could participate in the move-out inspection and when the tenant had to return the key). This nominal award reflects that although actions have occurred that contravened the *Act*, these contraventions were not deemed to be of such magnitude or significance as to warrant a more extensive monetary award.

In limiting the monetary award to nominal amounts for the three areas identified above, I recognize that the tenant earnestly believes that they experienced mental anguish and suffering as a result of their interactions with the landlord. Other than the three areas noted above, I find the remainder of the tenant's assertions either unsubstantiated or reliant on the tenant's interpretation of emails and interactions which could easily be interpreted differently. Despite the tenant's attempts to provide context to the emails and interactions with the landlord, I found much of the tenant's evidence confusing, ill-focussed and dependent on findings that the landlord was in some way responsible for the increase in the tenant's pre-existing anxiety issues. Without any opinions from health care professionals familiar with both the tenant and the actual circumstances of

their tenancy and interaction with the landlord, I find that the tenant has not met the burden of proof required to enable me to make anything other than the nominal monetary award granted in this decision.

As the tenant has been partially successful in this application, I allow the tenant to recover $50.00, representing one-half of their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $200.00. The tenant is 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.

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: June 20, 2019

Residential Tenancy Branch