Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT; MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord, the landlord's agent, and the two tenants, "tenant CS" and "tenant RM" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her husband who was also the co-owner of this rental unit, had permission to speak on her behalf. This hearing lasted approximately 96 minutes.

The landlord confirmed receipt of both tenants' applications for dispute resolution hearing packages and both tenants confirmed receipt of the landlord's evidence packages. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with both tenants' applications and both tenants were duly served with the landlord's evidence packages.

The hearing began at 1:30 p.m. with me, the landlord, the landlord's agent and tenant CS present. Both parties had a full opportunity to present their evidence. Tenant RM joined the hearing at approximately 2:19 p.m. I notified tenant RS about what occurred in her absence. Tenant RM and the landlord both had a full opportunity to present their evidence after tenant RS joined the conference. The hearing ended at 3:06 p.m.

Pursuant to section 64(3)(c) of the *Act*, I amend both tenants' applications to include the legal surname of the landlord. The landlord confirmed that she got married and legally changed her surname. Both parties consented to this amendment during the hearing.

Preliminary Issue – Joining both Tenants' Applications

At the outset of the hearing, tenant CS confirmed that her daughter, tenant RM, lived in the basement of the same rental property house where tenant CS was living in the upper portion of the house. Tenant CS said that tenant RM wanted to join the conference to provide her testimony. Tenant CS confirmed that her daughter filed an application that was scheduled for the following week. During the hearing, tenant CS contacted tenant RM and asked for her to call into the hearing.

Tenant RM called into the hearing and confirmed that she filed an application for dispute resolution against the landlord on the same date as tenant CS, April 10, 2019. The file number for that application is contained on the front page of this decision. Tenant RM confirmed that she filed for the same relief as tenant CS, for 12 months' rent compensation pursuant to a 2 Month Notice with the same reason and details as tenant CS . She said that she served her application to the landlord. She stated that her hearing was scheduled for July 18, 2019 at 1:30 p.m. The landlord confirmed that she received tenant RM's application and evidence. Tenant RM confirmed that although she did not receive the landlord's evidence package, which the landlord said was sent by registered mail, she reviewed the landlord's evidence provided to tenant CS and agreed to me considering that evidence at the hearing and in my decision.

Tenant RM asked that her matter be heard at the same time as tenant CS' application at this hearing. She said that all the facts were the same and the rental property house was the same. The landlord consented to this during the hearing.

Rule 2.10 of the Residential Tenancy Branch *Rules of Procedure* states the following:

> *2.10 Joining applications*
> *Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:*
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> > *a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;*
> > *b) whether all applications name the same landlord;*
> > *c) whether the remedies sought in each application are similar; or*
> > *d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.*

The same landlord is named in both applications, both applications deal with the same rental property, although they involve different upper and basement portions of the house. The same 12 months' rent compensation is sought in both applications, except they involve different amounts of rent paid. The former landlord is the same and the 2 Month Notice details and reason is the same in both applications. The landlord's written evidence is the same in both applications. The same facts and law will be considered in both applications.

For the above reasons, I notified both parties that I would be hearing tenant CS' application at the same time as tenant RM's application. Hearing both applications together would be efficient and consistent, avoiding duplication of facts and procedure. All parties consented to both applications being heard at the same time. I informed all parties that they were not required to attend the future hearing at 1:30 p.m. on July 18, 2019 and it would be cancelled by way of this decision.

Issues to be Decided

Are both tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of all parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both tenants' claims and my findings are set out below.

All parties agreed to the following facts. This tenancy began on March 1, 2016 with the former landlord. Both tenants were initially living together in the upper portion of the rental property house. Tenant RM moved into the basement of the same house on April 1, 2017, when she signed a written tenancy agreement with the former landlord. Tenant CS continued to live in the upper portion of the house pursuant to her written tenancy agreement with the former landlord. Monthly rent of $1,200.00 was payable by tenant CS and $700.00 was payable by tenant RM, both due on the first day of each month. Security and pet damage deposits totalling $1,200.00 for tenant CS and $700.00 for tenant RM, were paid to the former landlord and returned to both tenants.

The tenants testified that they vacated the rental unit pursuant to two 2 Month Notices to End Tenancy for Landlord's Use of Property, both dated December 31, 2018 ("two 2 Month Notices"). Both notices do not have an effective move-out date. Both notices state that they were served on March 1, 2019, but the tenants confirmed that they received the notices on January 3, 2019. The tenants explained that they took the March 1, 2019 date as their move-out date, rather than the service date. Tenant CS stated that she moved out on March 1, 2019, while tenant RM confirmed that she moved out on February 1, 2019.

Both tenants seek compensation under section 51(2) of the Act for 12 months' rent compensation. Tenant CS seeks 12 month rent compensation based on her rent of $1,200.00 per month for a total of $14,400.00. Tenant RM seeks 12 month rent compensation based on her rent of $700.00 per month for a total of $8,400.00.

The tenants claimed that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, they are entitled to compensation. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

Both tenants stated that the landlord did not use the rental unit for the purpose in the 2 Month Notice. They provided online advertisements for re-rental and emails inquiring about the property, where the landlord agrees to show them the unit for re-rental. The tenants claimed that the landlord or her family members did not move into the rental unit. They stated that they were told by the former landlord and his realtors that the purchaser wanted to move into the unit, so they had to leave. They maintained that there was mold in the basement, they told all potential purchasers about the mold, and the landlord had to renovate the basement. They claimed that they went through significant hardship and expense to move out of the rental unit, when the new landlord could have continued their tenancies.

The landlord stated that she purchased the rental unit from the former landlord in November 2018 and the completion date was April 16, 2019. The landlord stated that she did not provide a written notice to the former landlord seller in order to move into the rental unit. She explained that she did not have a verbal or written conversation with

the former landlord in order to issue a 2 Month Notice to the tenants. She said that while she initially intended to move into the unit, she could not because of mold issues and health concerns. She confirmed that she posted the unit for re-rental, removed the listings based on her realtor's advice, and she now has family friends staying there while they are traveling. She maintained that she was intending to move in but she had a baby, her husband had an accident, and the deal on the sale of their other current house which they share with 10 family members, fell through.

Analysis

Subsection 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord sells the unit, all of the conditions for sale have been satisfied, and the purchaser asks the landlord in writing to give notice to the tenants to end the tenancy so that the purchaser or a close family member can occupy the unit in good faith.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

> *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 if*
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> > *(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*
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> > *(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.*

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. Both tenants vacated the rental unit pursuant to the two Month Notices. The landlord testified that she did not ask the former landlord seller, to issue a notice to the tenants, in writing, in order for her, as a purchaser, to move in. She said that although she wanted to move in, she in no way communicated this to the former landlord, in writing.

No written documentation was provided by either party to show that the landlord purchaser requested a section 49 notice be given to the tenants, that the tenants be evicted because the landlord purchaser wanted to move in, or any such intention. Neither party provided a written copy of any request from the landlord purchaser to move in. This is a requirement of section 49(5) of the *Act*.

On a balance of probabilities and for the reasons stated above, I dismiss tenant CS' application for $14,400.00 and tenant RM's application for $8,400.00, under section 51(2)(b), without leave to reapply.

Conclusion

Both tenants' applications are dismissed without leave to reapply.

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: July 16, 2019

Residential Tenancy Branch