Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL -S; MNSD; MNDCT; FFL; FFT

Introduction

This hearing was originally scheduled to deal with a landlord's application filed on August 15, 2019 for a Monetary Order for damage to the rental unit and authorization to retain the tenant's security deposit and pet damage deposits. The tenant filed an Application for Dispute Resolution on November 13, 2019 seeking return of the security deposit and pet damage deposits and compensation payable where a landlord does not use a rental unit for the purpose stated on a *2 Month notice to End tenancy for Landlord's Use of Property* as provided under section 51(2) of the Residential Tenancy Act ("Act"). The two files were joined together and set to be heard at the same time.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Naming of landlord(s)

I noted that the landlord was identified as an individual referred to by initials SCL on the Landlord's Application for Dispute Resolution and an individual referred to by initials CW was listed as being SCL's representative. Whereas, on the Tenant's Application for Dispute Resolution, SCL was not named as a landlord and the only landlord identified was CW.

The tenant was of the belief that SCL and CW were the same person. CW testified that SCL is her mother. SCL did not appear for the hearing.
Both parties were in agreement that a written tenancy agreement existed; however, both the tenant and CW stated they could not or had not located their copy of the written

agreement. It was uncertain who was identified on the tenancy agreement as the landlord; however, CW stated that she remembers signing the tenancy agreement.

As far as payment of rent, CW testified that the tenant had initially paid rent by cheques made out to SCL but then the tenant began paying rent via e-transfer sent to CW and CW would transfer the funds to a joint account she holds with her mother SCL. The tenant could not recall to whom the rent cheques were payable but agreed the etransfer payments were sent to CW.

I had been provided a copy of the *2 Month Notice to End Tenancy for Landlord's Use of Property* and it was issued and signed by CW but it identifies the landlord as being SCL.

Both parties provided consistent submissions that the tenant met CW at the rental unit at the end of the tenancy for the purposes of conducting a move-out inspection.

The Act defines landlord under section 1 as follows, with my emphasis underlined:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

Ownership of the property was not made clear to me; however, it was apparent that CW was at least acting as agent for the owner(s) of the property in permitting occupation of

the rental unit to the tenant and exercising powers and performing duties of a landlord under the Act. As such, I informed the parties that I was satisfied CW met the definition of "landlord" as provided under the Act, whether she is the owner, a co-owner or not an owner but acting as an agent for the owner, and that I would include her name, along with SCL, as being a landlord in the style of cause. There was no objection by CW or her representatives.

For the balance of the decision, reference to landlord includes CW.

2. Service of hearing documents, evidence and submissions

Service of hearing documents and evidence was explored with the parties in detail. Below I have summarized what I heard.

With respect to the landlord's application for compensation of $2,550.00, the landlord testified that she sent the proceeding package to the tenant at his forwarding address using registered mail, on August 15, 2019. The landlord stated that the package sent on August 15, 2019 did not include any other documents such as receipts, estimates or a detailed calculation. The tenant acknowledged receipt of this package as described by the landlord. The landlord testified that she copied photographs and two documents, namely inspection reports of a potential buyer and the move-out inspection report, to a USB stick and sent it to the tenant via registered mail on November 9, 2019. The tenant confirmed receipt of the USB stick and confirmed the content was accessible.

I noted that I was in receipt of estimates for flooring replacement that the landlord had uploaded to the Residential Tenancy Branch service portal at the time of filing. The landlord confirmed that she did not send these to the tenant.

I noted that I was also in receipt of a Monetary Order worksheet dated November 19, 2019 that was prepared by the articling student representing the landlord and it appears to have been served as part of a package prepared in response to the tenant's claims that was delivered to the law office representing the tenant on November 20, 2019. The articling student representing the tenant confirmed that she received the package left at her office on November 20, 2019.

The Monetary Order worksheet prepared by the landlord's representative provides the file number associated to the tenant's application, but it indicates the landlord is seeking to make a monetary claim of $22,255.15. I enquired as to the intended purpose of the Monetary Order worksheet since it was not accompanied by an Amendment to an

Application for Dispute Resolution. The landlord and the landlord's representative provided conflicting responses. The landlord's representative was of the position the landlord seeks to make a claim of $22,255.15 against the tenant. The landlord was of the position that she suffered losses of $22,255.15 but she limits her claim to $2,550.00 as indicated on her application; however, the landlord also stated that her losses of $22,255.15 to renovate the rental unit should be used to offset the tenant's claim against her for $23,550.00.

The tenant's claim for compensation cannot be offset by an amount appearing on a Monetary Order worksheet. Rather, to offset an award to the tenant the landlord would have to make a claim for her losses and if successful, any monetary award to the landlord may be offset against a monetary award given to the tenant.

The landlord insisted upon proceeding to deal with her original claim of $2,550.00 as scheduled; however, the tenant stated that he did understand how the landlord calculated losses of $2,550.00 based on the documentation served upon him. The landlord was of the position it should have been obvious to the tenant based on the condition of the rental unit at the end of the tenancy.

As for the landlord's claim for compensation of $2,550.00, I find it did not provide full particulars of the dispute, as required under section 59 of the Act, and lacked a detailed monetary calculation, as required under the Rule 2.5 of the Rules of Procedure, especially considering the landlord did not provide the tenant with any specific costs or losses in the details of dispute or any receipts or estimates.

As for seeking to increase a monetary claim, the Rules of Procedure require that an Amendment to an Application for Dispute Resolution be submitted and served and that it be served no less than 14 days before the hearing date. The landlord's application was not amended in the proper form or within time.

I was of the view that to proceed to hear the landlord's claims would be unfair and prejudicial since she failed to provide the full particulars with the proceeding package or a detailed calculation in support of her claim. **Therefore, I declined to hear the landlord's application and it was dismissed with leave to reapply.**

Having dismissed the landlord's claim against the security deposit and pet damage deposits with leave and the time limit for making a claim against the deposits has expired, in keeping with Residential Tenancy Branch Policy Guideline 17: *Security Deposit and Set Off*, I shall consider ordering the repayment of the deposits to the

tenant, subject to determining whether the tenant extinguished his right to its return which I shall address in this decision.

As for the tenant's Application for Dispute Resolution, I confirmed that one complete package was served upon CW on November 13, 2019 and I was satisfied it was served within the requirements of the Act and Rules of Procedure. Considering the landlord had received the tenant's Application for Dispute Resolution on the very last day it could have been served and heard on November 28, 2019 under the Rules of Procedure, I enquired as to whether the landlord had sufficient time to review the claims against her and prepare a response. I informed the landlord that an adjournment may be considered if she required more time to prepare a response to the tenant's claims. The landlord indicated she did not have sufficient time to review and prepare a response to the tenant's claims but she stated she wished to proceed to have the matter resolved. Accordingly, I continued to hear the tenant's claims and explained the hearing process to the parties.

The parties were given the opportunity to ask questions about the process and of each other.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation payable under section 51(2) of the Act?
2. Disposition of the security deposit and pet damage deposits?

Background and Evidence

The tenancy started on February 1, 2014 and the tenant paid a security deposit of $800.00. At later dates, the landlord collected two pet damage deposits from the tenant, each in the amount of $875.00. At the end of the tenancy the monthly rent was $1,750.00 and payable on the first day of every month.

The landlord issued a *2 Month notice to End Tenancy or Landlord's Use of Property* ("1 Month Notice") to the tenant on May 1, 2019 and sent it to the tenant via registered mail. The stated reason for ending the tenancy was that:

- *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 2 Month Notice had a stated effective date of July 1, 2019; however, the effective date automatically changed to comply with the Act and the tenancy came to an end on July 31, 2019. The tenant withheld rent payable for July 2019 as compensation payable under section 51(1) of the Act.

The tenant sent his forwarding address to the landlord via registered mail on August 13, 2019. The tenant did not authorize the landlord any authorization, in writing, to make any deductions or retain the deposits. The landlord received the forwarding address and had commenced her claim against the deposits on August 15, 2019, as described previously.

Move-in inspection

The landlord submitted that the parties participated in a move-in inspection together at the start of the tenancy and an inspection report was prepared. The landlord testified that two original copies were prepared and one was given to the tenant and she retained the other, but the landlord has misplaced her copy of the move-in inspection report.

The tenant submitted that he did a walk through of the rental unit in deciding whether the rent the unit but that a move-in inspection was not done with the landlord and a move-in inspection report was not prepared by the landlord.

Move-out inspection

The parties provided consistent testimony that they met at the rental unit on July 31, 2019 for purposes of conducting the move-out inspection. The landlord had a condition inspection report with her at the time. The tenant left the premises before the landlord had finished inspecting the rental unit and completing the move-out inspection report.

The tenant stated he left because he realized there was no move-in inspection report prepared and he wanted to determine his rights.

The landlord stated that the tenant left the rental unit while she was inspecting the unit and she did not even realize he had left until he called her and said he had left because he did not want to wait around while she was looking at everything and to just sent him a copy of the inspection report. The landlord proceeded to finish the inspection without

the tenant, prepare the report, and sent it to the tenant via email on August 2, 2019 because she did not have a forwarding address for him at that time.

On August 20, August 2019 the tenant received an electronic invitation for an appointment to inspect the rental unit but the event was marked as being “cancelled”. The tenant submitted that invitations had been sent to the tenant regularly during the tenancy and the tenant responded to the landlord that he had already moved out of the rental unit and he did not understand the reason he was receiving the invitation . The landlord confirmed that she did not try to invite the tenant to participate in another move-out inspection.

Use of rental unit after tenancy ended

The tenant submitted that during the tenancy the rental unit was listed for sale. The landlord sent a text message to the tenant dated May 7, 2019 indicating she was going to renovate the unit based on the feedback of potential buyers. The tenant received the 2 Month Notice shortly thereafter. The tenant did not file to dispute the 2 Month Notice, claiming he did not have the money to dispute the 2 Month Notice. On September 30, 2019 the tenant observed that the property was listed for sale. The tenant is uncertain as to the status of the property after September 30, 2019.

The tenant’s representative argued that the landlord ended the tenancy for landlord’s use but has not used the property for the stated purpose and did not have the intention to occupy the rental unit when she issued the 2 Month Notice. Rather, the real reason the landlord ended the tenancy is to renovate the unit and sell it.

The landlord acknowledged the rental unit was listed for sale during the tenancy; however, after the tenancy ended she determined the rental unit was unfit for habitation by anybody due to extensive damage and horrible odors that she attributes to the tenant. The landlord testified that extensive renovations have been undertaken since the tenancy ended and are currently ongoing. The landlord’s costs for renovations are estimated to be $22,255.15 as reflected on the November 19, 2019 Monetary Order Worksheet.

The landlord explained that the property was still listed for sale as of September 30, 2019 because there was a listing contract in place until that date but that there were no showings while the renovations were taking place. The landlord after the listing contract expired on September 30, 2019 the unit has not been re-listed for sale. The landlord indicated that she is uncertain what will happen with the rental unit after the renovations

are completed. The landlord was of the position the renovations will be completed over the next few weeks.

The landlord testified that she issued the 2 Month Notice based on the "advice" she received from her Realtor. The landlord pointed out that the tenant did not dispute the 2 Month Notice and that if he had, she could have pursued the end of tenancy by way of a 1 Month Notice to End Tenancy for Cause due to damage caused by the tenant or by way of a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion.

Analysis

Upon consideration of all of the relevant facts and submissions before me, I provide the following findings and reasons.

Security deposit and pet damage deposits

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. The landlord made a claim against the tenant's deposits within 15 days of receiving his forwarding address; however, I have dismissed the landlord's claim, with leave, as she failed to provide full particulars and a monetary calculation in support of her claim. Although I have given the landlord leave to make another claim against the tenant, the time limit for making a claim against the deposits has expired and it is appropriate to order the return of the deposits to the tenant in keeping with Residential Tenancy Branch Policy Guideline 17, except if the tenant has extinguished his right to return of the deposits.

As for the pet damage deposits paid by the tenant, section 20(d) of the Act provides that a landlord may not collect more than one pet damage deposit, regardless of the number of pets. Therefore, the second pet deposit of $875.00 that was collected by the landlord unlawfully is refundable to the tenant in any event.

As for the security deposit and the first pet damage deposit, the Act provides that a tenant extinguishes the right to return of the deposits under section 24 and 36 in certain circumstances, which are where:

- the landlord gave the tenant two opportunities to participate in a move-in or move-out inspection in accordance with the Residential Tenancy Regulations; and,
- the tenant did not participate on either occasion.

The landlord testified that the tenant did participate in a move-in inspection with her and the tenant participated in a move-out inspection with her, albeit briefly. Based on the landlord's own submissions, I find there to be no extinguishment of the tenant's right to return of the deposits since her participated in the inspections. Therefore, I find the tenant entitled to return of the security deposit and the first pet deposit as well.

Provided to the tenant with decision is a Monetary Order for the sum of the deposits, or $2,550.00, to serve and enforce upon the landlord.

It is important to note that although the landlord has been ordered to return the deposits to the tenant, due to the time limit for making a claim against the deposits having expired, the landlord still remains at liberty to make a monetary claim against the tenant within two years of the tenancy ending and my decision to order return of the deposits to the tenant does not preclude her from doing so. Rather, she has only lost the right to make a claim against the deposits.

Compensation payable under section 51(2)

The landlord served the tenant with a 2 Month Notice which is a notice to end tenancy under section 49 of the Act. The tenant accepted the 2 Month Notice and vacated the rental unit pursuant to that notice. Where a tenancy ends due to a notice to end tenancy under section 49 of the Act, a tenant is entitled to compensation, as provided under section 51 of the Act.

Section 51 provides two forms of compensation, the first of which is payable for receiving the 2 Month Notice, under section 51(1) and the tenant has already received this compensation.

In addition to compensation payable under section 51(1), a tenant may be entitled to further compensation under section 51(2) in certain circumstances. Section 51(2) provides as follows:

> (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

(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

(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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[My emphasis underlined]

It is important to point out that the 2 Month Notice was issued indicating a reason for ending a tenancy that is provided under section 49(3) of the Act. Section 49(3) provides that a tenancy may be ended where:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) of the Act provides a definition of “Landlord” for purposes of a notice to end tenancy issued under subsection (3). The definition of landlord, for purposes of subsection (3) is:

"landlord" means

(a) for the purposes of subsection (3), an individual who
(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
(ii) holds not less than 1/2 of the full reversionary interest, and

Given the definition of landlord under section 49(1), it is the owner, or the owner's close family member that must occupy the rental unit and must do so starting within a reasonable amount of time after the tenancy ended and for a period of at least six months.

In this case, it is not entirely clear to me who the owner(s) of the property is/are as neither party provided evidence of such. Nor, was I provided any evidence to suggest ownership of the property changed after the tenancy ended and within 6 months of the tenancy ending. I would have expected such evidence would have been provided by the tenant in making this claim.

The landlord appearing at the hearing submitted that extensive renovations began after the tenancy ended and there is some evidence to support that renovations were required and were undertaken including: several photographs showing bugs and damage, communication with a contractor, a timeline of events after the tenancy ended, and the move out inspection report. I was not provided any evidence to suggest that anybody other than the owner or close family member of the owner has taken possession of the rental unit. As such, I accept that where significant renovations are being made to the rental unit and that it may not have been reasonable to expect anybody else to have possession of the rental except the owner. Also of consideration is that it had been only 3.5 month since the tenancy ended when the tenant filed his Application for Dispute Resolution.

Considering all of the above, I am of the view the tenant has pursued his claim for compensation under section 51(2) prematurely. Therefore, I dismiss this component of the tenant's claim with leave to reapply.

Filing fee

I make no award for recovery of the filing fee to either party as their claims either did not meet the requirements for making a claim or where premature; and, the tenant's deposits have been disposed of under the landlord's application.

Monetary Order

In keeping with my findings above, I provide the tenant with a Monetary Order in the sum of $2,550.00 for return of the deposits being held by the landlord.

Conclusion

The landlord's application is dismissed with leave.

The tenant's claim for compensation under section 51(2) is dismissed with leave.

The landlord is ordered to return the tenant's deposits to him and the tenant is provided a Monetary Order in the sum of $2,550.00 to ensure payment is made.

Having dismissed both parties' larger claims, or potential claims, against the other, I recognize this creates an opportunity for the parties to attempt to resolve the balance of their claims by way of a settlement agreement, if possible, before filing another Application for Dispute Resolution.

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 4, 2019

Residential Tenancy Branch