Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNRL-S, FFL
For the Tenant: MNDCT, MNSD

Introduction

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

The Landlord filed a claim for:

- Recovery of $837.50 in unpaid rent – holding the security deposit; and
- recovery of the $100.00 application filing fee.

The Tenant filed a claim for:

- $2,012.50 compensation for monetary loss or other money owed for the loss of quiet enjoyment of the rental unit from mice infestation; and
- the return of double the security deposit in the amount of $875.00.

The Tenant, the Landlord, an agent, W.J., for the Landlord ("Agent"), and a witness, L.P., for the Landlord ("Witness"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing, 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.

Neither Party raised any concerns regarding the service of the application for Dispute Resolution or the documentary evidence. Both Parties said they had received the application and/or the documentary evidence from the other Party and had reviewed it prior to 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 and any orders sent to the appropriate Party.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2018, running until April 30, 2019, and then on a month-to-month basis. The Parties agreed that the Tenant paid the Landlord monthly rent of $875.00, due on the first day of each month, and a security deposit of $437.50 and no pet damage deposit. The Parties agreed that the rental unit was an apartment in a building that was approximately 40 years old. The Parties agreed that the tenancy ended when the Tenant vacated the rental unit on June 1, 2019, and provided the Landlord with her written forwarding address dated June 4, 2019.

TENANT'S CLAIM

In her Application, the Tenant said she seeks compensation from the Landlord in the amount of $2,012.50 for "negligent care of the suite leading to a mouse infestation that disrupted quiet enjoyment in multiple ways and lasted longer than is reasonable."

The Tenant also applied for the return of double the security deposit in the amount of $875.00. In the hearing, the Tenant said she should be granted this award,"…because it can be granted for Landlords not properly filing paperwork to keep the deposit."

QUIET ENJOYMENT

The Tenant said she arrived at the amount for this claim, based on previous RTB decisions that she said:

> …ruled that more than four months was a prolonged amount of time to have mice, and it was expected that it would be treated by the Landlords. They got retroactively reimbursed for the amount of time they lived with the problem. The time of breach of quiet enjoyment was 10 months.

The Tenant said that she sent emails to the Landlord about this and alerted her roommate, the Landlord's daughter and the Witness in this hearing.

The Tenant said:

> There were a few pest control visits, but there were more intensive options that were not pursued. [The Landlord] said she didn't want to use a form of gas treatment or something, early on. Exterminators in general were a last-ditch effort, and I had made it clear that I considered it necessary to use whatever was necessary, but she chose not to use that treatment.

The Landlord said:

> [The Tenant moved in on June 1 [2018], and documents show that the first time – the first email we received about the mouse problem -- was on November 15, [2018]. We were still corresponding with her in April [2019] about it. We only dealt with the problem for about five or six months during her stay. She said in her documents that she noticed it in August, and she had told [the Witness], but she didn't contact me.
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> Regarding the gas situation, I have never come across anyone who recommended that you gas mice. I have dealt with pest control companies for many years, because our workplace is infested with mice or rats. I've only seen people use traps. On January 24, 2019, a pest control person recommended we tear down a wall and put up a new one. I have never heard about that. The pest

> control individual thought there were ants, so I didn't pursue the recommendation that we rip out a wall and put up a new one. I didn't think that was feasible with whatever it was. Also, we need something from the Strata - approval for any renovations we do. Toward the end, after having dealt with this for several months, we had sent the pest control every time [the Tenant] emailed me. They made five visits, and at the beginning, we asked tenants to wipe down all cupboards and clean up food. We bought plastic containers for their storage. [My daughter] bought mouse traps and poison. My ex-husband sealed all the holes that were visible. We examined the exterior with the pest control company, and contacted the Strata many times. It took time to look at a different pest control companies. It was a mouse problem from the pictures with droppings. But also, the problem was that the tenants were not vigilant in bleaching the cupboards – monthly bleaching is necessary. Leaving garbage out on the floor is an attractant for the mice. On March 15 we had a pest control company come in. [The Tenant] said I didn't give notice that I wanted to see the apartment. There was stuff all over the floor and in her room. There were so many things on the floor, that he was pushing stuff with the door to get into the bedroom. I don't live there and can't control this.

The Tenant responded:

> Specifically, her note about how I kept my room so messy – the door doesn't even open the way she's talking about. It opened out into the living room. I could open the door just fine. Despite this, I doubt that the pest control thought that it was an amount of mess that was exceptional or anything. I included photos of me showing clean tables, clean floors throughout my entire stay here. When I didn't want her to enter the suite, it was because she hadn't addressed the mouse problem. I didn't want her to judge me. Her testimony gives an improper, inaccurate evaluation of how things were.
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> The situation escalated in the last four months of my stay. There was an incessant sound disturbance. A mouse got into the ceiling above my room and was chewing on wood directly above my bed. I used ear plugs, but I was still woken up in the night. This was my final year, and I had finals and I was having trouble sleeping.

The Tenant submitted an audio recording of what she describes as "mouse chewing noise". I have listened to it, but I find it is not possible to determine the source of the

noise. The Landlord said that she received and listened to the recording. She said: “It doesn’t sound like mice. It sounds like a mechanical clicking.”

The Witness said that there were mice in the apartment, because she said she saw one. She said: “I did not hear mouse noises, other than when I saw it running. I never heard it at night. [The Tenant] also invited me into her room to listen to them and I wasn’t able to hear anything during the day. There were mice there because I saw them.

The Agent said the following in the hearing:

> I initially went over with [the Landlord] to see what we could do. We met the exterminator there. When he was just looking around, he noticed on the patio that the fence was deteriorated quite a bit. [The Tenant] had mentioned a scratching sound; he brought up the idea of ants - the fence was a sign. He was pretty certain that there was an ant problem. He put down something along the wall and on the patio. Not sure if that had to do with mice. Not sure that there were mice in the ceiling; he thought it was ants. No mice witnessed at that point.

In her written submission, the Tenant said the following about how the problem affected her. She said:

> Seeing the mouse regularly in the kitchen made me use the kitchen less, despite the fact I’m a passionate cook. I had to buy food out more, which is more expensive and less healthy. It made me uncomfortable to be in the kitchen, because of the mouse infestation. Also, this should go without saying, but mice are not sanitary, and having an infestation in the kitchen is probably the place in the house most likely to spread any disease the mice may have. Just knowing that was really affecting my use of the kitchen.
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> The noise in my ceiling was a particularly excruciating. This occurred during my final semester in my final year of my undergrad degree. In other words, this was the exact term that master’s programs would be looking at while determining my acceptance. During the entire term into my finals’ season, I couldn’t study in my own room. I usually like to study in my room, but I now had to go to places outside of my home. I would try to arrive home as late as possible, to avoid the noise for as long as I could. I eventually had to wear ear plugs, if I wanted any hope of sleep. Even then, I’ve been woken up by noises that traversed the higher

> quality ear plugs I eventually invested in. This issue directly impacted not just my life at that time, but also my future career.

In her written submissions, the Tenant set out the "Options Not Taken by Landlord", which included fumigation, renovation and/or a "more intensive plan".

The Tenant quoted what she said were two previous RTB adjudication files; however, she did not provide the complete decisions or file numbers, therefore, I was unable to find these decisions in the RTB database. The Tenant quoted portions of these decisions; however, not all the documentary and testimonial evidence is included in these quotes to compare to the Tenant's situation. Further, as the Tenant observed, I am not bound by decisions of other Arbitrators, although I have reviewed the portions the Tenant shared in my consideration of the evidence before me.

In her application, the Landlord said:

> The Tenant has filed against us for monetary compensation, as the apartment had a mouse issue that was dealt on a weekly basis by her roommate, landlord, the strata and pest control companies. Evidence is provided to defend our case. We also gave a $30.00 discount on rent.

The Landlord said that she had offered the Tenant a rent reduction of **$30.00** a month in an email dated April 27, 2019.

The Landlord said that significant effort was made to eradicate the mouse problem. She said that she, her ex-husband, her daughter, the Strata, and pest control companies tried to eliminate the problem. The Landlord said that pest control companies attended the rental unit five times to deal with this problem.

> *DOUBLE THE SECURITY DEPOSIT*

As noted above, the Parties agreed that the last day of the tenancy was June 1, 2019, and that the Tenant provided the Landlord with her forwarding address in a letter dated June 4, 2019. The Landlord confirmed that she still held the security deposit, and that she applied for dispute resolution to claim against the deposit on November 10, 2019.

LANDLORD'S CLAIMS

The Landlord said the Tenant did not give sufficient notice of the end of the tenancy,

and therefore, she said the Tenant owes the Landlord the rent for the month in which the Tenant left. The Landlord said she retained the security deposit, in the amount of half a month's rent; therefore, she said the Tenant owes her another half month's rent, because she was unable to rent the unit after the Tenant left with short notice.

In the hearing, the Landlord said that on May 10, 2019, the Tenant gave notice of the end of the tenancy and moved out on June 1, 2019. The Landlord said they tried to find a replacement tenant, by advertising as they had done in the past, but that only one person applied. The Landlord said it was a young man and they were not comfortable with him moving in with their daughter.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Policy Guideline #16 ("PG #16") states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

   [the "Test"]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim, and the claim fails. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

According to section 7(2) of the Act, step four in the Test, and Policy Guidelines #5 and 16, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible.

TENANT'S CLAIMS

QUIET ENJOYMENT

Based on the Witness's testimony of having seen a mouse in the rental unit, plus the Tenant's evidence of mouse feces, and her testimony of having heard the mice, I find it more likely than not that the rental unit had a problem with mice in the walls and/or ceiling.

In terms of the "Options Not Taken by Landlord", which the Tenant suggested could have remedied the problem, I find that any extermination effort could have affected the health and quiet enjoyment of other tenants in the building. The Landlord's evidence was that she had to work with the Strata in taking these measures, in consideration of the other tenants in the building. The Landlord said she has dealt with pest control companies for many years as a landlord, and because her workplace is infested with rodents. The Tenant did not explain how she had greater experience with pest control than did the Landlord, which raises questions in my mind about the reliability of the Tenant's position that the Landlord had other options available to deal with the problem.

When I consider the evidence before me overall, I find that the Tenant did not demonstrate what more the Landlord reasonably could have done in the circumstances to eliminate the mice. I find that the Landlord utilized a variety of tools at her disposal to resolve the problem, responding to the Tenant's notifications of the problem in November 2018, and on an ongoing basis. The Tenant was willing to accept a rent reduction from the Landlord; however, she decided to move out the next month, anyway.

The Tenant said that she based the amount of her claim on past decisions of other RTB arbitrators. However, she did not provide the complete decisions or file numbers, which would allow me to consider the other decisions in the context of their evidence and analyses.

I find on a balance of probabilities that the Tenant has not provided sufficient evidence to establish that she has met the steps of the Test or her burden of proof in establishing her claim. However, I accept that it is more likely than not that there was a mouse or mice in the rental unit; therefore, pursuant to PG #16, I grant the Tenant a nominal damages award of $180.00. This represents recovery of a retroactive rent reduction of $30.00 per month for the six months that the Landlord was made aware of the problem by the Tenant: November 2018 to April 2019 (the Tenant received the rent reduction for May 2019 from the Landlord).

DOUBLE THE SECURITY DEPOSIT

The Tenant's second claim was for double the return of the security deposit. Section 38 of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (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:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenant mailed her forwarding address to the Landlord on June 4, 2019, which was deemed received by the Landlord five days later, pursuant to section 90 of the Act or on June 9, 2019. The Parties agreed that the tenancy ended on June 1, 2019. Therefore, pursuant to section 38(1), the Landlord was required to return the $437.50 security deposit within fifteen days of June 9, 2019, namely by June 24, 2019, or apply for dispute resolution, claiming against the security deposit. The Landlord

provided no evidence that she returned any amount of the security deposit. Further, the Landlord applied to claim against the deposit on November 10, 2019. Therefore, I find the Landlord failed to comply with her obligations under Section 38(1).

The consequences for a landlord failing to comply with the requirements of section 38(1), are set out in section 38(6)(b) of the Act:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the Landlord must pay the Tenant double the security deposit. There is no interest payable on the security deposit. I award the Tenant **$875.00** for double the return of the security deposit.

LANDLORD'S CLAIMS

Section 45 of the Act sets out a tenant's obligation regarding ending a tenancy.

> **Tenant's notice**
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> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
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> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Landlord claims that the Tenant owes her half a month's rent, in addition to the security deposit the Landlord holds in lieu of this claim for a total of $875.00, plus recovery of the $100.00 Application filing fee.

The purpose of compensation for such a claim is to reimburse the Landlord for the cost

they incurred, as a result of the Tenant's breach. However, the Landlord is required to mitigate their loss or damages incurred, as set out in step four of the Test.

The Landlord said they advertised for a new tenant; however, they limited the pool of potential applicants, because they only wanted a female tenant from June through August 2019, as the Landlord's son planned to live there starting in September 2019.

Based on all the evidence before me, overall, I find that the Tenant breached the Act by ending the tenancy in contravention of section 45 of the Act. I find that the Landlord proved that the Tenant violated the Act by vacating the rental unit without having given one month's notice of the end of the tenancy.

Further, I find that the Tenant's failure to give proper notice resulted in the Landlord incurring a loss of rental income in June 2019. The Landlord established the value of this loss as one month's rent, minus the $30.00 rent reduction offered the Tenant of $845.00.

Finally, I find that the Landlord tried to mitigate her rental income loss by advertising for another tenant for the rental unit, as soon as possible. Accordingly, I find the Landlord has met the burden of proof in establishing a loss of $845.00 for this portion of the claim. As the Landlord was successful in her claim, I also award her recovery of the $100.00 application filing fee for a total award of **$945.00**

Set-Off of Claims

I have granted the Tenant a nominal monetary award of $180.00 for compensation for the loss of quiet enjoyment, and a monetary award of $875.00 for the return of double the security damage deposit, for a total award of $1,055.00.

I awarded the Landlord $945.00. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $437.50 in partial satisfaction of the Landlord's monetary claim. In addition, I award the Landlord with a Monetary Order of $407.50 to make up the difference between the security deposit and the amount of rent payable at the end of the tenancy, in addition to recovery of the application filing fee, for a total award of **$945.00**.

When these awards are set off against each other, the Landlord is left owing the Tenant **$110.00**. I award the Tenant with a Monetary Order of $110.00 from the Landlord in satisfaction of the award set off between the Parties.

Conclusion

The Parties are both partially successful in their respective applications. The Tenant's claim for compensation for a breach of quiet enjoyment of the rental unit is largely unsuccessful, as she did not provide sufficient evidence to establish that the Landlord breached the Act or tenancy agreement. The Tenant's evidence also failed to establish the value of the loss on a balance of probabilities; however, I granted the Tenant a nominal award of $180.00 to reflect the value of a rent reduction for the six months during which the Landlord was aware of the interference with the Tenant's quiet enjoyment.

The Tenant is successful in her claim for double the return of the security deposit, as the Landlord failed to comply with section 38(1) of the Act by returning the security deposit or applying for dispute resolution within 15 days of the Tenant providing the Landlord with her written forwarding address.

The Landlord is successful in her claim for recovery of one month's rent from the Tenant, because the Tenant failed to provide the Landlord with a month's notice of the end of the tenancy, pursuant to section 45 of the Act. The Landlord is also successful in her claim to recover the $100.00 application filing fee for a total award of **$945.00.**

After setting off the awards, I grant the Tenant a Monetary Order from the Landlord under section 67 of the Act in the amount of **$110.00**.

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: December 12, 2019

Residential Tenancy Branch