Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $35,762.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for a monetary order for the return of double the security and pet damage deposits in the amount of $3,300.00, and to recover the $100.00 cost of their Application filing fee.

The Tenants and two agents for the Landlord, H.Y. and M.Y. ("Agents"), 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 Tenants and the Agents 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; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 emailed to the appropriate Party.

At the beginning of the hearing, I reviewed the Tenants' claims and noted that they were in excess of the legislated limit of $35,000.00 that the Director is authorized to award in dispute resolution proceedings. As a result, the Tenants agreed to withdraw their claims

on monetary order worksheet items 1, 2, 6, and 8, The Tenants also removed $100.00 from the amount claimed in item #5 below, for a total withdrawal of $4,162.00 in claims. Therefore, I dismiss these items without leave to reapply for them.

Res Judicata

During the hearing, the Parties referred to other dispute resolution proceedings that they have each filed against one another. One such file was decided in May 2018, in which the Tenants applied for: "monetary compensation for harassment (breach of quiet enjoyment) under Section 28 of the Act." The RTB records for the previous case indicate that the hearing was held on April 30, 2018, and that the Tenants' application for compensation in this matter was dismissed without leave to reapply.

This raises the issue of *res judicata*. *Res judicata* is a rule of law that a final decision, determined by an arbitrator or adjudicator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

I find that the previous application for dispute resolution raised the same type of allegations of a breach of quiet enjoyment, which the Tenants have again asserted in the current Application. Both Parties have expressed frustration at the other's personal behaviour and broken promises, which has led the Parties to file repeated applications for dispute resolution against the other.

I find that the previous matter is related to the same Parties and the same issue and that a final decision was issued by the previous Arbitrator on the merits of the claim. Accordingly, I decline to hear this matter pursuant to the doctrine of *res judicata.* I, therefore, dismiss the Tenants' claim for compensation for a breach of quiet enjoyment without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2017, with a monthly rent of $2,500.00, due on the first day of each month. The Parties agreed that the Tenants paid a security deposit of $1,250.00, and a pet damage deposit of $400.00.

The Parties agreed that the tenancy ended, because the Landlord served the Tenants with a Two Month Notice for End of Tenancy for Landlord's Use dated March 26, 2019, with an effective vacancy date of May 31, 2019 ("Two Month Notice").

The following chart is a summary of the Tenants' monetary order worksheet claims. The withdrawn claims are crossed out for reference:

	Receipt/Estimate From	For	Amount
1	~~Order # 31035614~~	~~Owed to Tenants~~	~~$500.00~~
2	~~Order # 31041890~~	~~Owed to Tenants~~	~~$262.00~~
3	Two Month Notice	Bad faith – 12 x rent	$30,000.00
4	Application 31051490	Filing fee	$100.00
5	Loss of Quiet Enjoyment	[Tenant: C.E.]	~~$2,500.00~~ $2,400.00
6	~~Loss of Quiet Enjoyment~~	~~[Tenant: J.S.]~~	~~$2,500.00~~
7	$1,250.00 security deposit	Return of double the security deposit	$2,500.00
8	~~$400.00 pet damage deposit~~	~~Return of double the pet damage deposit~~	~~$800.00~~
		Total monetary order claim	~~$39,162.00~~ $35,000.00

#3 Two Month Notice to End Tenancy – bad faith = $2,500 x 12 = $30,000

The Tenants claim that the Landlord failed to meet the stated purpose of the Two Month Notice, which was to have her son, M.Y., move into the rental unit, and which conflicted with section 51(2)(a), (b) of the Act. They said that according to section 51(2), the

Landlord is, therefore, liable to pay them “the equivalent of 12 times the monthly rent payable under the tenancy agreement”.

The Parties agreed that M.Y. did not move into the rental unit until September 2019. The Agents said that M.Y. worked on house repairs from June through August 2019, rather than moving in immediately. The Tenants argued that this demonstrated bad faith on the part of the Landlord.

The Agents said that M.Y. could not move in right away, because of extenuating circumstances. They said that the 80-year old Landlord had knee surgery on June 25, 2019, and that M.Y. had to help her recover.

The Tenants said that according to the Agents’ documentary evidence, they knew of this surgery prior to giving the Tenants the Two Month Notice. As such, there was no need to give the Tenants the Two Month Notice so soon; the Tenants could have continued to live in the rental unit until M.Y. was ready to move in.

The Tenants pointed to RTB Policy Guideline #50 (“PG #50”), for a definition of what a reasonable time is in terms of carrying out the purpose of a Two Month Notice. They quoted the following sections of PG #50:

> **Reasonable Period**
>
> A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.
>
> It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.
>
> If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.
>
> **Accomplishing the Purpose/Using the Rental Unit**

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.

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.

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. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:

- so extensive that the rental unit must be vacant in order for them to be carried out, and
- the only manner to achieve that vacancy is by ending the tenancy.

If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn’t notify the landlord of any further change of address or contact information after they moved out.

> The following are probably not extenuating circumstances:
>
> - A landlord ends a tenancy to occupy a rental unit and they change their mind.
> - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations
>
> [underlining added per Tenants' emphasis]

The Tenants said that pursuant to PG #50, M.Y. was not allowed to renovate the rental unit or perform cosmetic repairs that could have been completed after he moved in or before the Tenants moved out.

In terms of extenuating circumstances, the Tenants said that PG #50 states that the circumstances needed to have stopped the Landlord from accomplishing the stated purpose of the Two Month Notice. The Tenants argued that the Landlord and Agents knew about the surgery in advance and could and should have delayed serving the Two Month Notice on the Tenants.

The Tenants went on to argue that M.Y. moved into the rental unit shortly after the Tenants served them with the Notice of Hearing for this proceeding on August 29, 2019.

The Agents said that in addition to the extenuating circumstances of the Landlord's surgery, the condition of the house after the tenancy required M.Y. to do extensive repairs before he moved in. They said there were 163 holes in the walls, purple walls that required significant of repainting to cover, and other damage to the rental unit. They said that this work took months to complete. The Agent, H.Y., said:

> The surgery was not part of this equation. Whether it was extenuating or not, my brother was taking care of her and couldn't work on the house other than in evenings. It took extensive work to bring the house back to a livable state.

H.Y. added that the bathroom renovation happened after M.Y. moved into the house. She said he moved in before the Labour Day weekend, which was approximately three months after the tenancy ended.

The Agents said that the legislation's reference to a "reasonable amount of time" and "bad faith" aims at preventing Landlords from re-renting or putting the rental unit on the market for sale after serving a Two Month Notice for a Landlord to move in.

H.Y. said:

> This is obviously not the case here; it doesn't fit into that bad faith category. A reasonable amount of time is however long it took to get the house habitable. [M.Y.] had slowly started moving things in over time. He moved in when it was ready for him to move in. He lives there now and intends to live there.

The Tenants argued that the Landlord intends to sell the residential property. They said the Landlord:

> …served eviction notices four times in the 21 months we lived there. Also, in late February 2019, we received an email from [H.Y.] saying that the Landlord intends to sell the house. They've now fixed it up and are waiting out the six-month period to sell it. They've been trying to get rid of us for over a year. Finally, the Two Month Notice was not served in good faith, because the Landlord never intended to live there. They're waiting to sell it.

H.Y. agreed that there have been eviction notices. She said the reason has been a turbulent relationship. "In the first three months we noticed excessively hoarding and digging up the front garden without authorization. There were a lot of reasons why we put eviction notices in. We thought the house was being damaged." H.Y. said:

> Mom is 89 now – one option was selling the house, because she has so much anxiety with this relationship; it's not worth owning or renting it. The real estate agent said: 'This looks like a crack den; I can't sell this'. Selling didn't seem like a good option. We like the house; it's a nice little house. He's moved in and is completely imbedded. [M.Y.] is officially moved in and staying. We didn't pursue the selling option, because he decided he wanted to live in the house.

#4 Filing Fee = $100.00

Filing fees are generally awarded if the applicant is successful. As such, I will address this at the end of the Decision, further to analyzing the Tenants' other claims.

#5 Loss of Quiet Enjoyment/Harassment Christina Ewart = ~~$2,500.00~~ → $2,400

As noted above, this claim was dismissed without leave to reapply, based on the doctrine of *res judicata*.

#7 Recovery of Double the security deposit = $2,500.00

The Tenants said that they gave the Landlord their forwarding address in writing via email on May 20, 2019. The Landlords acknowledged receipt of the Tenants' forwarding address.

Analysis

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

#3 Two Month Notice to End Tenancy – bad faith = $2,500 x 12 = $30,000

When I consider the evidence before me, overall, I find it more likely than not that the Landlord served the Two Month Notice on the Tenants, because her son wanted to move into the rental unit. I find that the "renovation" work that M.Y. did on the house prior to his moving in was based on his preference for what it should look like and was faster and easier to do before he moved in. I find that this, combined with assisting his mother after her surgery, contributed to extenuating circumstances that prevented M.Y. from moving in immediately, pursuant to section 51(3)(a).

Pursuant to section 51(2) of the Act, I find that in these circumstances, steps were taken within a reasonable period of time after the effective date of the Two Month Notice to accomplish the stated purpose for ending the tenancy. Therefore, I dismiss the Tenants' claim in this regard without leave to reapply.

#4 Filing Fee = $100.00

To be determined at the end of the Decision.

#5 Loss of Quiet Enjoyment/Harassment Christina Ewart = $~~2,500.00~~ → $2,400

Dismissed pursuant to *res judicata*, as set out in Preliminary Matters section above.

#7 Recovery of Double the security deposit = $2,500.00

I find that the Tenants provided their forwarding address to the Landlord on May 20, 2019, and that the tenancy ended on May 19, 2019.

Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **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
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> 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.

The Landlord was required to return the $1,250.00 security and pet damage deposits within fifteen days of May 20, 2019, namely by June 4, 2019, or apply for dispute resolution claiming against the deposits, pursuant to Section 38(1). The Landlord provided no evidence that they returned any amount of the deposits; however, the Landlord applied to the RTB for dispute resolution, claiming against the deposits on June 3, 2019 in another file, which resulted in an award for the Landlord on November 25, 2019. Therefore, I find the Landlord complied with her obligations under Section 38(1).

Accordingly, the Tenants are not eligible for the return of double the security and pet damage deposits in this matter.

Further, the security and pet damage deposits were set off against the Landlord's award in the RTB decision dated November 25, 2019; accordingly, the Tenants are no longer eligible to claim recovery of the original security and pet damage deposits. As such, this claim is dismissed without leave to reapply.

The Tenants are unsuccessful in their Application; therefore, I decline to award recovery of the $100.00 Application filing fee.

Conclusion

The Tenants are unsuccessful in the claims in their Application, as I found they provided insufficient evidence to support their claims in these matters. The Tenants' Application is dismissed without leave to reapply on all bases

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 19, 2019

Residential Tenancy Branch