



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application 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's agent ("landlord"), the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 50 minutes.

The landlord confirmed that he had permission to speak behalf of his brother, who is a co-owner and the landlord named in this application. The landlord stated that he also had permission to represent his father, who is also a co-owner of the rental unit. The tenant confirmed that her advocate had permission to speak on her behalf. The tenant called back into the hearing a few times, as her phone was not working properly, but she gave permission to proceed while she was absent for a limited few minutes, as her advocate spoke on her behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties confirmed that they were ready to proceed with this hearing and they had no objections.

Issue to be Decided

Is the tenant 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 both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2017. A written tenancy agreement was signed by both parties. Rent of \$850.00 was payable on the first day of each month.

The landlord stated that this tenancy ended on April 30, 2018, while the tenant claimed that it was on April 28, 2018.

The tenant's advocate stated that the tenant vacated the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 30, 2018 ("first 2 Month Notice"). The notice has an effective move-out date of March 31, 2018. The tenant confirmed that she received this notice on February 2, 2018.

The tenant seeks compensation under section 51(2) of the Act for two months' rent compensation of \$850.00, totalling \$1,700.00. The tenant claimed that because the landlord has not used the rental unit for the stated purpose on the first 2 Month Notice, she is entitled to compensation. A copy of the first 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *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 tenant stated that the landlord did not use the rental unit for the purpose in the first 2 Month Notice. She said that the landlord demolished the rental unit and she had a feeling he would when she went online to check if he had obtained demolition permits. The tenant's advocate maintained that when the tenant went back to get her belongings from the rental unit after moving out, the landlord was demolishing the unit.

The tenant seeks compensation of \$13,528.00 for belongings that she says the landlord failed to store or safeguard. She seeks \$1,200.00 for six chairs, \$2,000.00 for a wedding dress, \$500.00 for a flower girl's dress, \$600.00 for her son's bike, \$1,800.00 for her wheelchair, \$1,088.00 for her grandmother's blanket, \$500.00 for a floor lamp, \$800.00 for an electric guitar, \$1,300.00 for photo albums, \$140.00 for a buddha statue, \$65.00 for a burgundy vase, \$35.00 for artificial flowers, \$160.00 for two Bombay candleholders, \$45.00 for a first aid kit, \$250.00 for a Hoover upright vacuum, \$60.00 for a Swiffer steam cleaner, \$1,000.00 for a perfume collection, \$25.00 for a bathroom scale, \$340.00 for a box of personal mementos, \$1,000.00 for a space heater, \$373.00 for storage fees, \$120.00 for a stand-up fan, \$80.00 for an air conditioner, and \$47.00 for a small heater.

The tenant's advocate provided a breakdown with the above information along with photographs for most of the items. The tenant stated that the landlord's father verbally agreed to store the tenant's belongings at the rental property, after she moved out of the rental unit, until the end of May 2018, when the tenant could pick them up. The tenant's advocate said that when the tenant returned to pick them up, the items were "strewn about or gone." The tenant's advocate claimed that the landlord paid for a truck to move the tenant's belongings, not all of the tenant's items fit in the truck, and the landlord wanted the tenant to move out early. The tenant referenced text messages that she sent to the landlord in early May 2018, stating that the landlord's father agreed to store her belongings, that it was the law for the landlord to store the tenant's items for a month, and that the tenant would go to the RTB. The tenant claimed that she read in the *Act* that the landlord was responsible for storing the tenant's belongings for a month.

The tenant seeks \$3,400.00 for a loss of quiet enjoyment. She said that she was seeking a reimbursement of rent while she was living at the rental unit. She claimed that the landlord kept wanting her to move out, stating that other people wanted to move in. She stated that she lived with mice in the house, after one month of moving in. She explained that she had breathing problems from the mold at the rental unit. She claimed that the landlord hired someone to harass and intimidate her to move out, the landlord called the police on her, and someone let the air out of her tires. She said that she stayed in the rental unit as long as she did, renewing her tenancy agreement three times for three-month periods, because it was hard for her to find alternative places to live that provided the wheelchair access that she required.

The landlord disputes the tenant's entire application. The landlord stated that the tenant "denied" the first 2 Month Notice, and he indicated the wrong reason in it, so he issued a corrected "second 2 Month Notice" dated February 24, 2018, which he posted to the tenant's rental unit door on the same date. He maintained that he indicated the correct reason on the second 2 Month Notice stating:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord said that he had the permits to demolish the rental unit and it was demolished. He stated that the tenant received the second 2 Month Notice because she sent him a text message on February 12, 2018, indicating that she got that notice and referencing the demolition of the rental unit. He claimed that was why the tenant moved out on April 30, 2018.

The landlord testified that neither he, nor his father, or his brother, agreed to store the tenant's belongings at the rental unit after she vacated. He said that he helped the tenant move her belongings the day she left by paying \$150.00 and getting her a moving truck. He provided a text message confirming same from the tenant and the tenant agreed during the hearing about this moving truck. He maintained that the tenant left "rotten, damaged chairs" at the rental property, for which the landlord was not responsible, but no other items were left. He said that the house was vacant, and it was a farm area so he could not secure the tenant's chairs for her. The landlord submitted photographs of the chairs and the empty unit. He stated that the tenant submitted online photographs of the items she was claiming, as they were not taken at the rental unit and they were not her items.

The tenant responded to the landlord's submissions. She stated that she did not receive the landlord's second 2 Month Notice. She claimed that the landlord only took a photograph of posting the second 2 Month Notice, but not the first 2 Month Notice or another notice to end tenancy he gave to her. She said that she filed a dispute of the first 2 Month Notice, but the landlord did not attend. She explained that she moved out pursuant to the first 2 Month Notice because the landlord said he needed her out. She maintained that she stayed until the end of April 2018 because she received the first 2 Month Notice on February 2, 2018 and her advocate told her that she was entitled to stay for two full months until the end of April. The tenant stated that she only referenced her wheelchair and her son's bike in the text messages to the landlord because they

were the most important items to her and her son, but there were many other items missing, as noted on her list above.

Analysis

I have jurisdiction to hear this application, as the tenant filed it on March 24, 2020, which is within the two-year limitation date of April 2018, the end of tenancy month, as per section 60(1) of the *Act*.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire application of \$18,628.00, without leave to reapply.

Section 51 Double Monthly Rent Compensation

Section 51(2) of the *Act* established a provision whereby a tenant was entitled to a monetary award equivalent to double the monthly rent if the landlord did not use the premises for the purpose stated in the 2 Month Notice issued under section 49 of the *Act*. That section, which has now been replaced, was in force until May 2018, and applies to the tenant's current application. Section 51(2) stated:

51 (2) In addition to the amount payable under subsection (1), if
(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I make the following findings, on a balance of probabilities, based on the testimony and documentary evidence of both parties. The tenant vacated the rental unit at the end of April 2018, rather than March 31, 2018 as indicated on the first 2 Month Notice. I find that while the landlord issued the first 2 Month Notice to the tenant on January 31, 2018, he indicated the wrong reason for the landlord or a close family member to move in and revoked that notice by issuing a second 2 Month Notice with the corrected reason of demolition on it.

I find that the landlord issued the second 2 Month Notice to the tenant on February 24, 2018, by way of posting to her rental unit door. The landlord submitted copies of the notice and photographs of it posted to the tenant's door. I find that the tenant received that notice and moved out pursuant to it, as the effective date indicated was April 30, 2018. I do not accept the tenant's explanation that she moved out at the end of April because of when she received the first 2 Month Notice. I find that it is not a reasonable explanation that the tenant suddenly went online to check for demolition permits, because she suspected that was the landlord's reason, without having received the second 2 Month Notice. The tenant referenced the demolition reason in her text message to the landlord on February 12, 2018, which the tenant agreed she sent to the landlord.

Therefore, I find that the landlord used the rental unit for the reason on the corrected second 2 Month Notice. Both parties agreed that the landlord demolished the rental unit. Both parties agreed that the landlord had the necessary permits and approvals required by law to demolish the rental unit. The tenant provided copies of the online information regarding the building permit, which showed that the landlord applied for it on February 21, 2018 and was approved on February 22, 2018. I find that the landlord already had the permit in order to issue the second 2 Month Notice to the tenant on February 24, 2018.

Accordingly, I dismiss the tenant's application for double the monthly rent compensation of \$850.00, totalling \$1,700.00, without leave to reapply.

Damages and Loss Test

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Loss of Quiet Enjoyment

Section 28 of the Act deals with the right to quiet enjoyment (my emphasis added):

- 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];*
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following, in part (my emphasis added):

*A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial interference** with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the **landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps** to correct these.*

***Temporary discomfort or inconvenience does not constitute a basis** for a breach of the entitlement to quiet enjoyment. **Frequent and ongoing interference or unreasonable disturbances may form a basis** for a claim of a breach of the entitlement to quiet enjoyment.*

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.

I dismiss the tenant’s application for a loss of quiet enjoyment of \$3,400.00, without leave to reapply.

I find that the tenant failed to show that the landlord caused a loss of quiet enjoyment amounting to unreasonable disturbance, substantial interference, or frequent and ongoing interference. While the tenant may have suffered temporary discomfort at the rental unit, she continued to renew her tenancy agreements three times for three-month periods each time with the landlord.

I find that the tenant failed to provide sufficient documentary evidence that there was mold and mice at the rental unit, how they affected her tenancy, how long they were there for, what dates these incidents occurred, that she reported these issues to the landlord, and that the landlord failed to act.

I find that the tenant failed to provide sufficient documentary evidence in the form of medical records from her doctor or prescription or treatment information, showing that she suffered breathing problems as a result of mold from the rental unit.

I find that the tenant failed to provide sufficient documentary or witness evidence to support her claim that the landlord hired someone to harass and intimidate her, what they did specifically, the dates of such incidents, when she reported the issue to the landlord, and that the landlord failed to act.

Compensation for Personal Belongings

I dismiss the tenant's application for compensation of her belongings of \$13,528.00, without leave to reapply.

The legal requirement regarding storage of the tenant's belongings at the end of a tenancy, is when a tenant abandons a rental unit, as per Part 5 of the *Act*. In this case, the tenant did not abandon the rental unit. The tenant moved out pursuant to a notice to end tenancy, as per her own testimony during this hearing, and used the landlord's truck to transport her belongings. Although the tenant was unable to move all of her belongings when she vacated, I find that the landlord was under no obligation to store or safeguard the tenant's belongings. It was up to the tenant to remove all of her possessions from the rental unit when she vacated the property.

I find that there was no agreement between the landlord and the tenant for the landlord to store or safeguard the tenant's belongings after the tenant moved out. The text messages produced by the tenant clearly state that the landlord did not agree to store or safeguard the tenant's belongings, that the tenant was required to remove all of her possessions when she moved out, and that the landlord was not responsible for any

items left behind by the tenant. This is despite the tenant's claim that the landlord's father verbally agreed to store her belongings; I accept the landlord's explanation that his father did not agree to it and his father spoke very little English. I accept the landlord's testimony that he was main contact for this tenancy and that he dealt with most of the tenancy-related issues, as the tenant agreed that she dealt with him.

I find that the landlord was not responsible for the tenant's belongings after she vacated the rental unit, pursuant to the *Act* or by way of an agreement. Therefore, I find that any losses that the tenant suffered as a result of losing her belongings, are her own to bear. I find that the tenant failed to meet part 2 of the above test.

I also find that the tenant failed to meet part 3 of the above test as she did not provide sufficient documentary evidence including receipts, invoices, estimates or quotes to show how she arrived at the numbers for the items claimed. The tenant did not submit photographs of many of the items.

Conclusion

The tenant's entire application is 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 31, 2020

Residential Tenancy Branch