Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT**
MNDL, MNDCL, MNRL, FFL

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act (the "Act").*

The tenant applied for:

- A monetary order for damages or compensation pursuant to section 67.

The landlord applied for:

- A monetary order for damages pursuant to section 67;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for rent pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both the tenant and landlords attended the hearing. As both parties were present, service of documents was confirmed. The landlords acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's Application for Dispute Resolution. Neither party raised any issues with timely service of documents.

Preliminary Issue – naming of landlords and application to adjourn hearing
There are 2 named landlords in the landlord's Application for Dispute Resolution and a single landlord named in the tenant's Application for Dispute Resolution. The landlords are husband and wife, residing in the same residence. The female co-landlord raised the issue that she was not properly named in the tenant's Application for Dispute

Resolution. The female co-landlord sought an adjournment based on this fact. The landlords acknowledge that they live together and that both of them had the opportunity to review the tenant's application and evidence. The female co-landlord testified that although she "*looked over her husband's shoulder"* while he reviewed the evidence, she was not prepared to defend the tenant's application. She's been busy with other responsibilities she prioritized over this hearing. Despite this, the co-landlords together drafted a joint submission seeking a dismissal of the dispute against the male landlord based on the fact that the female landlord wasn't served.

The tenant testified that the notice to end tenancy that prompted her application was only signed by the male co-landlord, and that as far as she understood there was only one landlord. The tenant forgot that the tenancy agreement was signed by both landlords.

At the commencement of the hearing, I considered the four factors as set out in Residential Tenancy Branch Policy Guidelines PG-45. I determined the following:

1. The adjournment was unlikely to result in a resolution between the parties.
2. The need for the adjournment arose from the intentional neglect of the female co-landlord in preparing for this hearing.
3. It didn't appear to me that either of the landlords required the assistance of an advocate or a language assistant to provide services. The landlords prepared fulsome evidence and written submissions. The landlords were not being denied a fair opportunity to be heard.
4. While adjourning the hearing would not result in prejudice to either party; hearing the matter on the scheduled hearing date would likewise not prejudice either party.

Based on the considerations above, I declined to adjourn or reschedule the hearing set before me.

In accordance with section 64(3)(c), I amended the tenant's Application for Dispute Resolution to reflect both named landlords.

<u>Preliminary Issue – jurisdictional issues</u>

In their Application for Dispute Resolution, the landlords seek 5 items, as set out in their monetary order worksheet. The landlords testified the first line, a previous judgment has been paid. The second issue, for labour to repair damages to the rental unit, was previously adjudicated by an arbitrator on October 10, 2019. The file number for the previous decision is noted on the cover page of this decision. As it was already adjudicated upon, I advised the parties that I had no authority to change, review or

reverse the decision. This portion of the landlord's claim was dismissed. Issues 4 and 5 seeks penalties under the administrative penalties section (Section 5.1) of the *Residential Tenancy Act.* I advised the landlords that if they seek that relief, they must file a complaint with the compliance and enforcement unit of the Residential Tenancy Branch, not an Application for Dispute Resolution to be heard before an arbitrator. Issues 4 and 5 of the landlords' application was dismissed. I advised the parties that issue 3 on the landlord's monetary order worksheet, for "garage rent" would be adjudicated upon during this hearing.

Issue(s) to be Decided

Is the tenant entitled to 12 months' compensation for the landlord not accomplishing the purpose of ending the tenancy for landlord's use?
Is the landlord entitled to a monetary order for the tenant's occupation of the garage area?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following evidence. The landlord ended her tenancy when he served her with a Two Month's Notice to End Tenancy for Landlord's Use. The tenancy ended on May 31, 2019, in accordance with the notice. A copy of the notice was provided as evidence by the tenant. It states the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord testified that the landlord didn't move into the unit after May 31st. Immediately after taking possession, the landlord started doing renovations. The tenant testified that in November 2019, she found the landlord's advertisement on Kijiji, seeking a new tenant. A copy of the advertisement was provided as evidence. I note the advertisement states the move-in date is December 1, 2019.

The landlord testified that he never intended on renovating the rental unit, however the tenant had "*completely trashed*" it, forcing him to do repairs. The landlord provided several photos of the rental unit to corroborate his testimony. The landlord testified that during the tenancy, he had not inspected the rental unit to determine the state of repair and maintenance. When the tenant vacated it, the landlord describes the unit as unfit for human habitation. After making the rental unit suitable for living in, the landlord testified he used it for his own purposes for resting in after using the jacuzzi.

The landlord acknowledges placing the advertisement in Kijiji, since the cost to repair the rental unit was high. The landlord submits that the advertisement seeks a tenant for January 2021 since January is beyond the "*prohibited time"* where he cannot re-rent the unit. Although the tenant has submitted video evidence of a potential tenant coming to view the unit, the landlord testified he told this person that it's not available until January.

The landlord also provided testimony regarding his claim for "*garage rent".* Adjacent to the tenant's basement rental unit is a room containing the landlord's jacuzzi. Although the landlord does not live on the residential property, he continues to access the jacuzzi via the shared garage. On page 2 of the tenancy agreement, it states "*garage area is a common area not included in the rent".* Despite this, the tenant occupied the garage area by storing her goods there, blocking the landlord's access to it. The landlord testified that the tenant's boyfriend would also occasionally live in the garage when the tenant fights with him. The tenant is alleged to have locked the doors from the inside and disabled the landlord's remote access clickers thereby denying them access to the garage. The landlord submits that he should be compensated with $100.00 per month for the 4 years the tenant occupied the garage and denied his access to it.

The tenant testified that the previous arbitrator determined that the garage door was beyond it's useful life. She had to use this defective door to access her rental unit on a daily basis. It was an overused door, not sturdy or solid. The landlord didn't provide the tenant with any notification that her use of the garage would cost her $100.00 per month. If he had done so, the tenant would have been agreeable to making it more accessible.

Analysis

- Tenant's application for 12 months compensation

The tenant seeks 12 months compensation pursuant to section 51(2) of the *Act*. This compensation is explained in Residential Tenancy Branch Policy Guideline PG-50.

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- *taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or*
- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation.*

…

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. 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.

The tenant provided evidence in the form of a kijiji advertisement, listing the rental unit. I note that this listing shows December 1, 2019 as the available date, not January 1, 2020 as the landlord submits. Despite this, December 1, 2019 is still 6 months away from the final date of the tenancy with this tenant, on May 31, 2019.

I accept the landlord's testimony and photographic evidence to corroborate that the state of the rental unit was poor at the end of the tenancy. The landlord was required to do repairs and minor renovations to the unit before he could occupy it. As such, I find there was extenuating circumstances preventing the landlord from accomplishing the stated purpose of occupying it immediately. I find that the landlord made use of the unit as soon as he was able to, using it for a rest area following his use of the jacuzzi. Without any evidence to the contrary, I accept the landlord's testimony that the rental unit remained occupied by the landlord until June, 2020 when it was finally rented out.

Based on the above findings, I find the landlord used the rental unit as stated in the Two Month's Notice to End Tenancy for Landlord's Use for a period of at least 6 months. The tenant's application is dismissed without leave to reapply.

- Landlord's claim for $4,800.00

The landlord seeks $100.00 per month for the time he claims access to the garage was denied by the tenant.

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord testified that he told the tenant that his access to his jacuzzi was being blocked by the tenant's belongings or that the tenant made it difficult or impossible to access it due to reversing the locks. I accept this testimony. However, while this was happening, it doesn't appear to me the landlord took any action to remedy this situation. The landlord could have provided the tenant with written notice that she was breaching a material term of the tenancy and asked her to remedy it within a specified timeframe. If the tenant failed to remedy this term of the tenancy, the landlord could serve her with a One Month Notice To End Tenancy for Cause. I have insufficient evidence before me to show the landlord took the steps to seek the tenant's compliance. It is unreasonable for the landlord to seek monetary compensation from the tenant when he had the ability to seek her compliance during the tenancy. I find the landlord has failed to take the steps to mitigate the loss (point 4 of the 4 point test).

Second, the landlord did not provide sufficient evidence to establish the value of the damage or loss. I was not provided with any frame of reference to show how he arrived at his figure of $100.00 per month for denied access to the garage. It appears to me the

figure was arbitrarily chosen. I find the landlord has failed to establish the value of the damage or loss (point 3 of the 4 point test). For these reasons, the landlord's claim for $4,800.00 is dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's 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: February 09, 2021

Residential Tenancy Branch