Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S, MNRL-S, FFL
For the tenants: MNSD, MNDCT, MNETC, RPP, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the "landlord's Application") on October 15, 2020 seeking an order to recover money for unpaid rent and utilities, for damages, and the application filing fee.

The tenants filed an Application for Dispute Resolution (the "tenants' Application") on October 30, 2020. They seek the return of the security deposit, compensation for other money owed, compensation related to the end of the tenancy, a return of personal property, and reimbursement of the Application filing fee.

The matter proceeded to a hearing pursuant to s. 74(2) of the *Act* on February 12, 2021. The tenants were in the hearing; the landlord did not attend.

The tenants stated they did not know of the landlord's Application prior to the start of this hearing. They did not receive any information, or any prepared evidence, from the landlord. They provided that they sent their prepared evidence package to the landlord, in combination with the notice of this hearing. This was via both courier and registered mail, and they verified that the registered mail was delivered and logged as 'received' by the landlord at the landlord's address of business.

The *Residential Tenancy Branch Rules of Procedure* gives specific directions on management of a hearing and the attendance of parties. Rule 7.3 provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this

basis, I dismiss the landlord's Application for monetary compensation. The landlord does not have leave to reapply on this issue.

Issue(s) to be Decided

Are the tenants to compensation related to the Notice to End Tenancy for the landlord's Use of Property?

Are the tenants entitled to an order for monetary loss or compensation pursuant to s. 67 of the *Act*?

Are the tenants entitled to the return of their pet damage or security deposit pursuant to s. 38 of the *Act*?

Is the landlord obligated to return the personal property of the tenants, pursuant to s. 65 of the *Act*?

Are the tenants entitled to recover the filing fee for their application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenants presented a copy of the tenancy agreement. The tenants signed the agreement on December 9, 2019; the landlord signed on December 15, 2019. The tenancy was for a fixed term starting December 15, 2019 and ending December 14, 2020. The rent amount payable was $1,400 per month payable on the first of each month. The tenants paid a security deposit of $675.

The tenants issued a "Notice to End Harassment" to the landlord. They presented a copy of this document in the evidence, dated September 23, 2020. The letter lists the tenants' concerns with the landlord harassing them. This includes "constantly threatening [them] with non-official eviction", "staring at [them]", and their concern about immediate confrontation whenever they wish to leave the rental unit.

The tenants provided a 12-page timeline of events. This begins on September 5, 2020 and carries through straight to October 22. The account covers the end of tenancy:

- September 30: the tenants advise landlord that they would move out on October 3 – they tried to have the landlord sign a 'Mutual Agreement to End Tenancy' document but the landlord refused. They provided the September 23 document to the landlord and approximately 30 minutes later advised the landlord they would move out on October 3 and "[the landlord] was happy for us to move on Saturday October 3rd 2020"
- after this the tenants cancelled the October rent cheque, advising the landlord of the same
- October 3: meet with landlord to review the state of the rental unit – the landlord advised they would enlist the alternate landlord contact to undertake the inspection and the tenants advised they would discuss the remaining 3 days' rent amount with this alternate contact as well
- the landlord "would not discuss the deposit" and ripped up the remaining cheques from the tenants

The tenant followed up with an email to the landlord on October 10 to try to determine when the final inspection would be.

a. return of security deposit

On their Application, the tenants note the deposit of $675 was held for over 15 days past the end of the tenancy. At the end of the tenancy, the landlord wished to have a "professional inspection" completed by the alternate landlord contact who the tenants knew since the start of the tenancy. The landlord did not answer calls or respond to messages from the tenants after the tenancy ended.

In their testimony the tenants described the final meeting with the landlord on October 3, 2020. In this meeting they handed the landlord a piece of paper with their forwarding address on it. A picture of this paper appears in the tenants' evidence.

The tenants advised the landlord that it was the landlord's responsibility to arrange the move-out inspection. They proceeded to the rental unit, and the landlord conducted a cursory examination of the unit, then claimed "[they] couldn't do a full inspection because [they] didn't know how to inspect appliances to check they still worked." They also described that the landlord did not make any comments about damages at that time. In their evidence the tenants provided a video of this interaction with the landlord.

The landlord did not discuss the security deposit at this meeting, and the tenants and landlord did not arrange for an amount of rent owing for the 3 days of October. The tenants stated they would have that discussion with the alternate landlord contact when the inspection meeting did take place and at that time they would sort out the security deposit.

b. compensation for the end of tenancy

The tenants make this claim for two months' equivalent rent amount, this for the time they endured "emotional distress" from the landlord. On the Application, the tenants described the landlord "trying to force [them] out of the rental unit with no proper notice and no grounds for eviction", this by way of letter and oral reprimands. The threatening language from the landlord included a limit on how much time the tenants had to leave, and the claims that they already had new tenants ready to move in.

The tenants provided messages from the landlord in evidence:

- September 5: "I seriously inform you that you are not welcome to live here and move out from my house right away" – the landlord here asked for the tenants' apology for referring to them as "the rudest person in Canada"
- text message same date "I will write a notice to you to make things easier", this after request to speak with the tenant
- September 19: "iat is considered as you refuse [*sic*] to apologize to me and you must move out' and "This is the second official notice to you." and "If you don't move out by Oct 18, 2020, my lawyer will take care of this case."

In the hearing the tenants described the landlord stating "I have someone to take your spot" and their repeated placing of notices on the door of the rental unit. They informed the landlord that ending a tenancy was a formal process; however, the landlord "didn't listen and just kept it up." Other instances included the landlord removing the garbage/recycle bins from their normal area and turning off the internet in advance of the end of tenancy when the tenants had already paid for that service. Also: the landlord always waited in the backyard very close to the tenants' unit.

The tenants provided video as part of their submissions. One video shows the landlord standing in the garage as the tenants return home. Another video shows the garbage area after some significant garbage displacement.

The tenants prepared a letter dated September 23 titled 'Notice to End Harassment.' This advised the landlord that they must serve an official notice to end tenancy and the letters that the landlord sends are "not official notice, they are harassment." They

request the landlord to stop following them around the house and staring. Also: “we. . . feel the need to film every time we leave our front door in case you try to ambush and bully us in a confrontation.”

The tenants sent a video that shows them presenting this letter to the landlord on September 30. They provided this letter with a Mutual Agreement to End Tenancy document and asked for the landlord’s signature as they presented this. The landlord queried about keeping the deposit and asked for time to review the letter. The tenants in response to this requested the signed agreement and a return of their cheques. In this interaction, the tenants requested a move out inspection meeting on the following Saturday (October 3) and scheduled the time for that meeting.

After this meeting, the tenants provided a document to the landlord that states their moving out date will be October 3, 2020. This is “after serving the landlord . . . with notice to end harassment.”

c. other monetary compensation

On their Application, the tenant provided that they “had to leave rental due to harassment from landlord. . . .If we had not had harassment from the landlord we would not have had to move which created a huge financial burden for us.” The tenants provided receipts from the new landlord to show the amount paid at the start of their new tenancy.

Pieces of this $2,129.44 claim include:

1. new security and pet deposit at new rental $1,800
2. moving truck and fuel: $112.99
3. carpet cleaning: $74.93
4. withheld parcel: $60
5. mail forwarding service: $58.30
6. USB stick for evidence: $15.66
7. moving boxes: $7.56

d. return of personal property

The tenants applied for a return of personal property. This is a parcel from overseas that they claim has a value of $60. They knew this parcel arrived at the Vancouver airport on September 23, 2020 from tracking information. In their Application they described how they were talking to the landlord about this parcel prior to their move out.

They provided a photo of the parcel label. They also provided a video clip of the landlord not answering the door when the tenants approached to ask about the parcel.

On October 10, the tenants inquired on whether a parcel they were waiting for had arrived at the unit since they moved out. This never got a response; nor did a subsequent message via text on October 14.

The tenants visit to the landlord on the same day saw the landlord shunning their request for their parcel. More messages to the landlord were unanswered, and the tenants enlisted the help of the local police. This also came to naught: the landlord informed the police they would forward the tenant's mail, yet this did not occur.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss 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.

a. return of security deposit

The *Act* s. 38(1) states:

1) . . .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. . .any security deposit . . . to the tenant
d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

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

From the evidence I find as fact that the tenancy ended on October 3, 2020. This was the final day when the parties communicated and walked through the rental unit. This is shown in the video provided by the tenants. The tenants followed up with the landlord because they felt it was necessary to go further through the unit for a closer inspection. The alternate landlord contact between the two parties did not contact the tenants to arrange for further inspection.

I find the inspection was completed on that final date. To what extent the inspection assessed the state of the rental unit is not at issue – that would be an issue for an apportionment of damages caused by the tenant. Rather, the issue is the completion of the final piece of that process: that is the condition inspection report.

The *Act* s. 36 provides for a report requirement from the landlord. Therein subsection (2) provides that a landlord's right to claim against the security deposit is extinguished if the landlord does not complete the inspection report and give the tenant a copy.

There is no evidence of a completed report either from the start of the tenancy or the end. Though the landlord left it rather open-ended on whether further inspection was needed, I find the evidence shows they abandoned this endeavour. The tenants provided evidence they messaged to the landlord repeatedly to re-visit the inspection; however, the landlord did not respond. On this, I find the inspection was completed.

I find the landlord did not meet the requirement of completing a report and providing a copy to the tenants. Their right to claim against any amount of the security deposit is extinguished.

The landlord made an application for dispute resolution to claim against the deposit within the legislated timeframe; however, they did not attend the hearing to present their claim. Because they applied, within the 15-day timeframe I find they complied with the condition set out in s. 38(1). Therefore, stemming from this, they are not obligated to pay the tenants double the security deposit amount.

In sum, the landlord may not retain or withhold any part of the security deposit any further; their right to do so is nullified by not completing a final inspection report. They are not obligated to pay the tenant double where they did apply for dispute resolution within 15 days.

For these reasons, I award the tenant the return of the security deposit at $675.

b. compensation for the end of tenancy

The *Act* s. 28 sets out the tenant's right to quiet enjoyment:

> 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.

The tenants here claim two months' rent for the time they endured emotional distress brought on by harassment from the landlord. I find what the tenants describe is in line with the protection of their right to quiet enjoyment.

I find there was a palpable notion in place that the tenants might be evicted. The tenants challenged the reason for this with the landlord, and the video and other messaging to the landlord shows the tenants referring to the law. The landlord used the word "notice" in their messaging to the tenant; however, I am not certain this refers precisely to a notion to end the tenancy. From what I see in the letters referred to in the tenant's evidence, this takes place from early- to mid-September. I find the messages in question – those of September 5 and 19 – do not contain an explicit reference to a notice to end tenancy. That is, the landlord is not referring to a specific *document* or *process* of officially ending a tenancy. Rather, I find the landlord is referring more to their giving the tenants a *warning*, thereby *putting them on notice*. Additionally, there is evidence that this was after an exchange where the landlord felt slighted by being referred to as "the rudest person in Canada."

The tenants' timeline outlines difficult communication with the landlord. This stemmed from a disagreement on the dog's access to the yard – from this, communication spiralled downward. Within a day of this disagreement, on September 6 one of the

tenants managed to speak to the landlord at their own front door and inform the landlord they would be moving out – this after finding another place to live. Three days later, the landlord abruptly asked the tenants for their move out date, and this exchange led to the landlord stating, “I give you two weeks I already have new tenants lined up.”

My finding here is that, as strained as the communication became, the tenants were well aware of their rights and I find they were not facing an immediate threat of eviction. They were observant of the landlord’s behaviour and each time countered with reference to the law.

As set out in their timeline, the landlord’s behaviour became more persistent, this to the point where one of the tenants felt obligated to keep a camera on in case there was an “ambush”. They described this as the landlord’s effort to “bully and try to intimidate [them]”. The landlord’s questionable behaviour included leaving the garbage clearly blocking the back walkway to the tenant’s unit and changing the household Wi-Fi password that the tenants pay for.

Clearly some behaviour was causing the tenants distress. Most conversations had from September 6 onwards concerned an end-of-tenancy date. From this point onward there is no threat of evicting tenants after they informed the landlord they were moving out. While the landlord was persistent about the date, I find in reality the tenants were not threatened by an eviction notice. Therefore, this is a shorter piece of what the tenants claim was bullying or harassment.

Throughout September I find it reasonable for the landlord to ascertain a specific end-of-tenancy date. The manner in which the landlord did so caused the tenants concern. This concern was not unfounded. Aside from communication issues, the parties continued watching each other, feeling it necessary to do so in case any interaction reached the point of altercation. I find this was two-way. Approaching a party with camera in hand to record a conversation can also be intimidating, and even cause communication to cease.

I find the actions – in contrast to words -- constitute an inconvenience or annoyance more so than active culpable behaviour of harassment. From September 6 onwards, I find the landlord was not engaging in a campaign to evict the tenants for cause. Rather, the landlord’s actions – which can fairly be described as pestering – tilt more towards ascertaining exactly when the tenancy would end.

Harassment and bullying are something quite more, and more severe than what the evidence shows here. There is no evidence of taunting, personal insults or derogatory

language based on the tenants' personal lives or circumstances. It is difficult to determine if actions involving garbage or internet access are deliberately targeted to the tenants. As well, it did not reach the point where the tenants were deprived of the use of the rental unit or access to it.

With this rationale in mind, I find it unbalanced to award the tenants two months' rent in return as they claim here. All the activity and communication they record is within the final month of the tenancy. This is not a sustained pattern of harassment ongoing from the start of the tenancy.

To bring this back to the consideration of quiet enjoyment, I find this is something more than temporary discomfort or inconvenience. I consider the seriousness of the situation and the length of time over which the situation existed.

The timeline is approximately one month where the tenants had day-to-day interactions with the landlord. I find this was of moderate severity, considering the tenants knew about their rights, yet felt pressure from the landlord to the point they felt it necessary to end the tenancy abruptly.

For these reasons, I award the amount of $500 to the tenants for the infringement on their right to quiet enjoyment of the rental unit. This was the impact on their reasonable privacy as well as the freedom from unreasonable disturbance.

c. other monetary compensation

The element that the tenants emphasize on this portion of their claim is that of the need for moving sooner rather than later. They attribute this to the landlord's conduct.

I find the costs associated with moving do not stem from any breach by the landlord. The tenants made the decision on their own to move within a short timeframe. The feeling of urgency was palpable and due to very real circumstances; however, in line with my findings above I balance the discomfort with the timeline involved and consider this to be the tenants own decision on how best to rectify the manner. This is not penalizing them for not exercising any other options. I also consider steps taken to mitigate the monetary loss.

Chiefly for this reason, I make no award for costs associated with their move. These are the initial outlay for rent and deposits to the new landlord, the moving van cost and the cost of boxes.

I find the need for carpet cleaning is in line with the tenants' duty to leave the rental unit reasonably clean by s. 37 of the *Act*. The landlord shall not bear this cost and I make no award for this.

For the tenants' missing parcel, I find they made considerable effort to ascertain its location and made repeated attempts to question the landlord about it. I make the award of $60 for the value of its' contents. I also award the tenant $100 for the time and effort – ultimately inducing stress – of their trying to locate the parcel and even question the landlord about it.

The cost of mail forwarding – for $58.30 – I find is rightfully owed to the tenants in these circumstances. This is more in line with the situation of a hasty move. More importantly, with a parcel item left unexplained in its absence, it is a measure of surety by the tenants that future deliveries will not go astray for any dubious reason.

The *Act* does not provide for recovery of other costs associated with preparing evidence for the hearing; therefore, the cost of USB stick is not recoverable.

d. return of personal property

In line with my finding above for return of the cost of the parcel, as well as compensation for the time and bother involved, I order the landlord to immediately return the parcel to the tenants. This is at the landlord's own expense to forward the parcel to the tenants in the fastest means available.

I find the landlord has the parcel in their possession and should properly be held accountable to answer for its location. If the landlord does not forward the parcel forthwith, or make the tenants aware of its location, the tenants are freely able to contact the police for further investigation.

Because the tenants were successful in their claim for monetary compensation, I award the $100 Application filing fee to them.

Conclusion

As above, the landlord's claim for monetary compensation is dismissed without leave to re-apply.

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order for total of awards indicated above, as well as recovery of the filing fee paid for this application. This total amount is $1,493.30.

They shall provide the landlord with this Order in the above terms and they must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the tenants may file this Order in the Small Claims Division of the Provincial Court where it can be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under S. 9.1(1) of the *Act*.

Dated: February 19, 2021

Residential Tenancy Branch