

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant was assisted by a friend, P.V.C. as a Cantonese interpreter. Both parties confirmed the tenant served the landlord with the notice of hearing package in by placing it in the landlord's mailbox on July 16, 2020. Both parties confirmed the tenant served the landlord with the submitted 44 documentary evidence files by placing in the landlord's mailbox on July 16, 2020. The landlord stated that she served the tenant with the 48 submitted documentary evidence files via Canada Post Registered Mail on October 21, 2020. The tenant argues that she only received 36 files. The landlord after extensive discussions clarified that she had added 12 document files to the Residential Tenancy Branch submissions without providing them to the tenant. The landlord identified the 12 documentary evidence files that were not submitted to the tenant. Neither party raised any other service issues.

I accept the undisputed affirmed and find that both parties have been sufficiently served as per sections 88 and 89 of the Act. The landlord is also deemed served with the tenant's submitted documentary evidence as per section 90 of the Act. The tenant is deemed served with the 36 documentary evidence files confirmed by the tenant. The remaining 12 documentary evidence files listed below are excluded from consideration in this hearing as the landlord failed to serve copies to the tenant.

EvidenceOthers_1_Plan_of_Ground_Floor
EvidenceOthers_2_Letter_to_confirm_unlocking_interconnection
EvidenceOthers_3_Letter_of_Witness_(FullyOccupied)_20180203
EvidenceOthers_3_Letter_WashMachine
Evidence1Residential_Tenancy_Agreement_&_Addendum

Evidence2_Two_Months_Notice
01_In_Response_to_Ms_Karen_Hungs_Disput
01_Landlords_Statement
Evidence5_Supreme_Coiurt_Hearing_for_Bill_of_Cost_(Appointment)
Evidence10_Landlords_preivous_residence
Evidence10_5785_Fleming_Street_by_Google

During the hearing the tenant's monetary claim was clarified in that her application was filed for \$30,500.00 and her submitted monetary worksheet provides for a total of \$34,810.00. The tenant confirmed that she did not file an amendment for the additional items sought. The tenant failed to comply with Rules of Procedure 4.6, Serving an Amendment to an Application for Dispute Resolution increasing the monetary claim by adding unrelated items. Pursuant to Rules of Procedure 4.3, Time limits for amending an application, the tenant failed to file and serve and amendment to the landlord. On this basis, the tenant's monetary claim is limited to the original amount of \$30,500.00. The tenant's remaining items are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Preliminary Issue(s)

The landlord has argued that the tenant had already applied for the same issues in that these same issues was also spoken to in a previous dispute resolution hearing in a decision dated March 8, 2018. In that application the tenant filed for dispute for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated December 24, 2017 ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for the cost of emergency repairs, pursuant to section 67;
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord's agent, H.L. confirmed that no monetary claim was sought in that application concerning Sec 51 (compensation) or 67 (loss of use/quiet enjoyment). A review of that decision dated March 8, 2018 shows that a settlement was recorded

between these two parties. The application made by the tenant to claim for a monetary order for compensation for the cost of emergency repairs, an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, an order requiring the landlord to make emergency and regular repairs to the rental unit, and an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, were dismissed with leave to reapply. The landlord's application to dismiss this claim was denied.

The hearing proceeded on the tenant's monetary claim of \$30,500.00.

Due to extensive arguments the 60 minute scheduled hearing was exceeded and the hearing was adjourned after 83 minutes. Both parties were advised of the adjournment process and the addresses for both parties were confirmed. Both parties were cautioned that no new evidence was to be submitted nor would it be accepted.

On January 28, 2021 the hearing resumed with both parties. The tenant was assisted by C.L. a Cantonese Interpreter and the landlord was assisted by the agent, H.L.

Extensive arguments made by both parties resulted in the hearing being adjourned after 135 minutes.

On April 29, 2021 the hearing resumed with both parties. Both parties made submissions and presented evidence. Due to the extensive discussions of both parties the tenant was given 30 minutes to present her claim in full and the landlord was also provided 40 minutes to respond to the tenant's application in full.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a clarified monetary claim of \$30,500.00 which consists of:

\$29,650.00	Compensation
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	\$20,400.00	Sec. 51(2), Fail to Comply
	\$9,250.00	Loss of use, 40% of monthly rent due to loss of use of 70% of the rental unit
\$850.00		Return of Original Security Deposit
\$30,500.00		Total

During the hearing the tenant confirmed her understanding that her monetary claim would be limited to the amount file of \$30,500.00 despite her claim total on her monetary worksheet submitted as the tenant failed to file an amendment increasing the monetary claim.

Both parties confirmed that a mutual agreement to end tenancy on July 15, 2018 was made as a result of the landlord's original notice to end tenancy for landlord's use of property.

The tenant claims that she discovered that the landlord had re-rented the unit on January 5, 2019. The tenant seeks compensation under section 51(2) of the Act in that The tenant seeks 12 times the monthly rent of \$1,700.00 for \$20,400.00. The tenant claimed that the landlord re-rented the upper unit after the tenant had vacated the rental property.

The tenant went to the rental unit door with a witness and spoke to a male occupant who told her that he has been living there for several months since November 2018.

The tenant called her witness, X.D.W. who provided affirmed testimony. The witness stated that he went to the rental unit on July 15, 2018 to help the tenant move-out. The witness stated that he attended the same rental unit a second time on January 5, 2019 with the tenant and saw a man who answered to door. The witness stated that the man identified himself as a tenant and not the landlord. The landlord questioned the witness asking the witness if the man at the door was wearing glasses; what was the purpose of the witness attending the rental unit on January 5, 2019 and did the witness speak to the landlord's son. The witness answered that he can't remember if the man was wearing glasses; to see if the landlord had re-rented to other people; and "no" he did not speak to the landlord's son.

The tenant also called another witness, S.L. who confirmed that she went to the rental unit twice. The witness stated that she first attended the unit on January 9, 2019 with the named tenant to speak to a man that answered the door. The witness stated that

the man had advised her that he was a tenant and the landlord does not live there. The witness also stated that the landlord's son does not live there as well but has stayed in a basement suite sometimes. The witness stated that she attended on second occasion on January 16, 2019 and the man identified himself, "I am the tenant living here" since November 2018. The witness confirmed that this person was the same person she spoke to on the first occasion.

The tenant also stated that she had spoken to a neighbor that she had befriended next door to the rental property. The tenant stated that the neighbor had confirmed to her that new tenants had moved in November 2018 which consisted of 4 adult persons, two grandparents, a young couple with a child. The tenant stated that the neighbor had stated that the landlord or her son had never moved into the rental unit after she had vacated.

The landlord disputes the tenant's claims and referred to plumber invoice from February 2017. The landlord argued that the landlord's son does occupy a basement suite and refers to her submissions of a birth certificate; a printout of a Compass Card history of usage. The landlord claims that her son is living at the rental unit and the usage from the printout of history usage shows that he takes transit to and from the property.

Analysis

Section 51 (2) of the Act speaks to compensation for the tenant under a section 49 notice and states in part,

The landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, both parties confirmed that a mutual agreement to end the tenancy took place on July 15, 2018 as a result of a notice to end tenancy pursuant to section 49 of the Act. As such, I find that both parties mutually ended the tenancy on July 15, 2018 and that compensation under section 51 of the Act applies.

On this claim, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The tenant has provided sufficient evidence of her claim for compensation under section 51 of the Act. Both parties confirmed that the tenancy ended on July 15, 2018 as a result of a mutual agreement to end tenancy as a result of the landlord serving the tenant a 2 month notice under section 49 of the Act. The tenant claims that the landlord re-rented the tenant's upper rental unit after she vacated it. The tenant provided two witnesses, X.D.W. and S.L. The first witness, X.D.W confirmed with the tenant's assistance attending the rental unit on January 5, 2019 and again on January 16, 2019 to identify the person living at the property. Both witnesses confirmed that the man answering the door confirmed that he was not the landlord and was a tenant residing on the property since November 2018. The tenant also provided testimony of a neighbor that she had befriended who confirmed to the tenant that the landlord nor his son has moved into the property. However, the man stated that the landlord's son can sometimes occupy a basement suite of the rental property. I note that this differs from the tenant who occupied the upper unit of the rental property. Despite the landlord arguing that her son lives there the landlord has only provided evidence in support of this claim a birth certificate, a printout of Compass Card history usage. I find that the landlord's submission are insufficient to satisfy me of the landlord's son's residency, while he may occupy a basement suite on occasion this differs from the upper unit of the rental property. On this basis, I find that the tenant has been successful in her claim for compensation under section 51 of the Act. The tenant is granted a monetary order for \$20,400.00 which equals 12 times the monthly rent of \$1,700.00.

I note for the record the tenant failed to make any submissions regarding the monetary request for compensation of loss of use of the rental unit and return of the security deposit. In the absence of any submissions from either party regarding these two items of claim, I find that the tenant has failed to provide sufficient details of this portion of the application. As such, the landlord's application regarding these two claims are dismissed without leave to reapply.

Conclusion

The tenant is granted a monetary order for \$20,400.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2021

Residential Tenancy Branch