Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FF

Introduction

On December 21, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and both Landlords attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served a Notice of Hearing package to each Landlord by registered mail on December 30, 2020 and the Landlords confirmed that these packages were received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were sufficiently served the Notice of Hearing packages.

The Tenant also advised that her Amendment and evidence package was served to the Landlords by registered mail on April 8, 2021 and the Landlords acknowledged that they received this Amendment and evidence package. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I

am satisfied that the Landlords were duly served with the Tenant's evidence. As such, this evidence was accepted and will be considered when rendering this Decision.

The Landlords advised that their evidence was served to the Tenant by Xpresspost on April 15, 2021 and the Tenant confirmed that she received this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was duly served with the Landlords' evidence. As such, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2017 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on May 15, 2019 after being served with the Notice. Rent was established at $1,094.00 per month and was due on the first day of each month. A security deposit of $525.00 and a pet damage deposit of $525.00 were also paid. A copy of the written tenancy agreement was not submitted as documentary evidence.

All parties agreed that the Tenant was mailed the Notice in April, 2019. The reason the Landlords checked off on the Notice was because the Landlords intend in good faith to

occupy the rental unit. The Landlords indicated on the Notice that the effective end date of the tenancy on the Notice was July 1, 2019. A copy of this Notice was not submitted as documentary evidence.

The Tenant advised that a neighbour had told her that the Landlords would only stay on the property for six to eight months of the year. She stated that the copy of the Landlords' hydro bill, that was submitted as documentary evidence, does not prove that the Landlords took occupancy of the rental unit. She stated that Landlord J.S.'s proof of employment, that was submitted as documentary evidence, was created by a friend of his and that this friend's business is not listed in a local phone directory. Furthermore, no offer of employment or any financial documents were submitted to support that J.S. was employed by this person. Apart from these submissions, the Tenant provided scant evidence and relied on the Landlords submitting evidence to prove her claim for her.

As it is her belief that the Landlords did not use the property for the stated purpose, she is seeking compensation in the amount equivalent to twelve months' rent (**$13,128.00**) pursuant to Section 51(2) of the *Act* as she was served the Notice and the Landlords failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

J.S. advised that he moved into the rental unit, on or around July 25, 2019, which was approximately three days after his truck broke down for a second time. While he did not submit evidence to corroborate this, he stated that the two breakdowns and the death of his dog contributed to the reason why he was not able to move into the rental unit earlier. He stated that he moved into the rental unit for personal reasons, that the neighbours saw him living there, and that he has receipts to prove that he moved there. However, these were not submitted as documentary evidence either. He advised that the hydro bill demonstrates his usage during his stay and that the employment documents demonstrate that he worked for his friend from mid-August to November 2019. He stated that the rental unit was re-rented for January 1, 2020 and he moved back to Manitoba.

The Tenant also advised that she is seeking compensation in the amount of **$2,188.00** due to a loss of quiet enjoyment of the rental unit. She stated that everything changed after she lost power in the rental unit due to a windstorm in December 2018, rendering her without heat for seven days. She testified that when issues would arise with respect to the heat or appliances that did not function correctly, she would assist the Landlords with helping them address these issues; however, the Landlords would always question her. She stated that the Landlords effectively treated her as if she was responsible for

coordinating maintenance of the property. When she advised the Landlords of repair issues, the Landlords only wanted to deal with one contractor, and it took months to replace or repair issues. She referenced documentary evidence to support her position, including a note from an electrician which indicated that the baseboard heating was not sufficient for the rental unit. She stated that she was unable to quantify her loss that was equivalent to the amount of compensation that she was seeking.

J.S. advised that he would have a contractor fix a water pump whenever it would fail. Regarding a generator, he stated that he advised the Tenant that it could not be stored outside and that this was not provided as part of the tenancy. He submitted that there was only one company that would service the area for appliance issues and this company only attended the area once per week. He stated that the Tenant attempted to contact this company and was extremely rude on the phone. He advised that a majority of the Tenant's requests for repairs were done in a timely manner and that he coordinated these jobs himself. He stated that he contacted the electrician, who the Tenant had write the letter regarding the condition of the rental unit, and he testified that the electrician felt pressured by the Tenant to draft that letter and that it was not necessarily accurate. He submitted documentary evidence to refute the Tenant's claims.

Finally, the Tenant advised that she is seeking compensation in the amount of **$1,085.00** because the rental unit was not habitable after the windstorm of December 2018 and she had to move out for seven days. She stated that this windstorm knocked out the power to the entire region and was not restored for a week. Without any heat, she was forced to live with a friend of hers. She submitted a printout of a nearby hotel to support her claim for compensation.

J.S. advised that he stays in the rental unit every summer and maintains the property, which was relatively new in 2016. He stated that he did not know that the hydro had been knocked out by the windstorm until he was advised of this by the Tenant some time afterwards. He does not believe that the power was out for seven days and he stated that he has lived in the rental unit when the power had been out in the past.

Landlord K.I. advised that she had heard about the windstorm and had contacted the Tenant out of concern. It was only then that she was informed by the Tenant that the hydro had been knocked out. She stated that she attempted to work with the Tenant to troubleshoot any issues on the property and she submitted that the Landlords are not required to provide a secondary source of heat to the Tenant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served in April 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***51*** *(2) Subject to subsection (3), 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*
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> > *(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.*
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> *(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*
>
> > *(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
> > *(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that "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."

Finally, the policy guideline outlines the following about 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

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlords advised that their intention was to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, beginning within a reasonable period of time after the effective date of the Notice.

The consistent and undisputed evidence is that the effective date of the Notice was July 1, 2019 and J.S. advised that he only moved in to occupy the rental unit in late July 2019. He stated that this was due to the death of his dog and because his truck broke down twice. I can reasonably infer from this that these were his submissions on extenuating circumstances that prevented him from occupying the rental unit within a reasonable period of time after the effective date of the Notice. However, he did not provide any evidence to support that these incidents happened. Regardless, if he did provide this evidence, I do not find that these reasons would meet the criteria that establishes extenuating circumstances.

Nevertheless, even if I were to accept that these were extenuating circumstances, J.S. acknowledged that he only occupied the rental unit starting on or around July 25, 2019.

Moreover, he confirmed that the rental unit was re-rented in January 2020, which is consistent with their written submissions that he lived there until December 31, 2019. As such, I am not satisfied that the incidents that J.S. referred to would adequately constitute extenuating circumstances that would have prevented him from occupying the rental unit within a reasonable period of time after the effective date of the Notice. Furthermore, as the consistent and undisputed evidence is that J.S. moved into the rental unit on or around July 25, 2019 and vacated the rental unit on December 31, 2019, I do not find that J.S. occupied the rental unit, beginning within a reasonable period of time after the effective date of the Notice, for at least six months. Ultimately, I am satisfied that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$13,128.00**.

With respect to the Tenant's other claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regarding the Tenant's claim for compensation in the amount of $2,188.00 due to a loss of quiet enjoyment of the rental unit, when reviewing the totality of the evidence before me, I am not satisfied that the Tenant has provided sufficient or persuasive evidence to support her claim. Furthermore, she was unable to even quantify how she believed she was entitled to or suffered a loss in the amount that she was claiming for. As such, I dismiss this claim in its entirety.

With respect to her claim for compensation in the amount of $1,085.00 because the rental unit was not habitable after the windstorm of December 2018, requiring her to move out for seven days, I do not find that the Tenant has provided sufficient or compelling evidence to support her claim that she moved out of the rental unit for seven days. Furthermore, while she has provided a print-out of what it would have cost her to stay at a hotel for those days, I do not find that the Tenant has submitted sufficient evidence to support that this would have been equivalent to the loss that she suffered. As a result, I dismiss this claim without leave to reapply.

As the Tenant was partially successful in these claims, I find that the Tenant is entitled to recover $50.00 of the $100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenant

12 months' compensation	$13,128.00
Filing fee	$50.00
TOTAL MONETARY AWARD	**$13,178.00**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$13,178.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this 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 3, 2021

Residential Tenancy Branch