



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: MNSD, MNDCT, FFT**
 LL: MNRL, MNDCL, FFL

Introduction

This review hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67;
- A return of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member. The tenant was primarily represented by their agent.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Neither party made any requests for an adjournment and all present confirmed they were prepared to proceed.

Issue(s) to be Decided

Should the decision and order of February 25, 2021 be upheld, amended or cancelled and replaced with a new decision and order?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on September 15, 2019. Monthly rent was \$1,600.00 payable on the first of each month. A security deposit of \$800.00 was paid at the start of the tenancy.

There was a previous hearing under the file number on the first page of this decision dealing with the issue of the security deposit for this tenancy. That matter has been conclusively determined in the earlier hearing.

The parties agree that the tenant gave written notice on December 13, 2020 to end the tenancy and vacated the rental unit on December 21, 2020. The tenant submits that they ended the tenancy early as a result of various breaches of the materials terms of the tenancy by the Landlord, specifically citing unsafe living conditions, harassment, stress and duress.

The landlord submits that as the tenant provided notice to end the tenancy on December 13, 2020 they remained obligated to pay rent for the month of January 2021. The landlord submits that they took reasonable measures to mitigate their rental income losses by finding a new potential occupant who intended to occupy the rental unit as of January 15, 2021. In the previous decision the landlord was issued a monetary award of \$800.00, representing the rental income loss from January 1, 2021 to January 15, 2021.

The landlord now submits that the potential occupant who was intended to take possession of the rental unit ultimately chose not to enter a tenancy agreement and the landlord consequently suffered rental income loss totaling \$1,600.00 for the month of January 2021, of which \$800.00 has already been addressed in the earlier monetary award.

The tenant seeks a monetary award in the amount of \$1,600.00, the equivalent of one month's rent and submit that they endured harassment and unsafe living conditions at the hands of the landlord throughout their three-month tenancy. The tenant submits that there was no exterior lighting causing on the rental property causing injuries, constant requests by the landlord to access their storage areas, often with improper notice, refusal by the landlord to provide mailbox keys, and ongoing interactions between the tenant's family and the landlord's family which they characterize as harassment, condescending and frightening.

The tenant provided into documentary evidence written submissions, letters from witnesses and copies of correspondence between the parties.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45 provides the manner in which a tenant may end a periodic tenancy and sets out that:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant submits that the living conditions provided by the landlord were so adversarial and poor that they ought reasonably to be considered a breach of the material terms of the tenancy agreement and give rise to the right to the tenant to end the tenancy.

I find little evidence in support of the tenant's position. I find much of the tenant's complaints to not be supported in the documentary evidence and the hyperbolic nature of the accusations to be so extreme as to lack credibility. Based on the submission and evidence I find no basis for the tenant's position that they were entitled to end the tenancy due to a breach of material term by the landlord which was not corrected after written notice was given.

Consequently, I find that any notice provided by the tenant to end the tenancy was effective on the date one month after the notice was received on the date that is the day before rent is payable. In this case as the tenant gave written notice on December 13, 2020 the effective date would have been January 31, 2021 and the tenant remained responsible for paying rent on January 1, 2021.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

In the present case the parties agree that the tenant provided notice to the landlord to end the tenancy on December 13, 2020 and failed to pay rent for January 2021. The landlord submits that they took reasonable measures to mitigate their losses by finding a new potential occupant for January 15, 2021. The landlord testified that despite the potential occupant's initial intentions they ultimately chose not to take possession and the landlord was unable to mitigate their rental income losses.

Based on the totality of the evidence I am not satisfied that the landlord has incurred a loss as claimed. The landlord provided no documentary evidence to support their submission that there was an interested occupant for January 15, 2021 or that they ultimately chose not to take possession of the rental unit. If the landlord had a potential occupant they were communicating with, it would be reasonable to expect that there would be some correspondence or evidence of communication. Given the paucity of evidence I am not satisfied that the landlord suffered a loss by the breach of the tenant in the amount they now claim or at all. Consequently, as I find the landlord has not met their evidentiary burden on a balance of probabilities, I dismiss the present application.

The tenant makes a claim for a monetary award for the various perceived infractions by the landlord which I understand to be based on a loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

The tenant submits that since the start of the tenancy they have been the subject of an unrelenting campaign of harassment on the part of the landlord and their family members.

I find insufficient evidence in support of the tenant's claim. I find the written statements from the tenant their spouse and their agent, and the brief and vague testimony provided to have little credibility or to be supported in any other piece of documentary evidence. The email correspondence between the parties submitted into evidence does not demonstrate harassment or unreasonable conduct on the part of the landlords despite disagreements about issues such as utility usage and entering the rental unit.

While I accept that the landlord has accessed the rental unit more frequently than the tenant preferred, I find the tenant's position that this caused harm or loss to not be supported in documentary materials and have little air of reality.

Based on the totality of the evidence of the parties I find little support for the tenant's application that they incurred any damages or loss as a result of the landlord's conduct. I find the complaints to be exaggerated, not supported in the evidence and their claim

for a monetary award wholly out of proportion with reason so that it has little credibility. Consequently, I dismiss the tenant's application for a monetary award.

As neither party was successful in their respective application, I decline to award recovery of the filing fee for either application.

Conclusion

The decision and order of February 25, 2021 are set aside and replaced with this decision.

The applications from the landlord and tenant are dismissed in their entirety 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: June 15, 2021

Residential Tenancy Branch