Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HKT Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNDRL, MNDL-S, FFL
Tenant: MNSD, MNETC, FFT

Introduction

This hearing was originally scheduled to deal with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

At the outset of the hearing the landlord advised that they had submitted their own Application for Dispute Resolution seeking a monetary order that had been scheduled to be heard on September 12, 2022. Their application sought compensation for unpaid rent and repairs to the rental unit.

I note the landlord received the hearing package for their Application from the Residential Tenancy Branch (RTB) on February 9, 2022. The tenant submitted in her written submissions that the landlord mailed these documents to her on February 9, 2022. She stated in that submission: "The allowable 5 days for service results in his application submitted ***exactly*** 14 days before our hearing" [reproduced as written].

However, Canada Post tracking information shows that the tenant actually received the landlord package on February 11, 2022. If there is evidence that a party received documents served in accordance with the Act, deeming provisions are not applied. As such, I find the tenant received the landlord's Application 17 days before the hearing.

I also note that in the tenant's written submission they suggest the landlord had inappropriately filed their "cross-application" not as soon as possible but, in fact, 65 days after they had received her Application. While I don't disagree that the landlord did file their application substantially later than the tenant had filed hers, the RTB did not treat the landlord's application as a "cross-application", which is why it was scheduled for several months later. As such, the landlord's Application is not inappropriate.

Regardless of these factors, the parties agreed that they were prepared to deal with all matters related to the tenancy that were raised in both Applications at this hearing. As

such, I heard testimony and have considered the evidence for both Applications and this decision is a final and binding decision on these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property; for return of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the landlord is entitled to a monetary order for unpaid rent pursuant to a defective notice to end tenancy; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act.*

Background and Evidence

The parties submitted into evidence a copy of a tenancy agreement signed by the parties on May 31, 2009, for a one-year fixed term tenancy beginning on June 1, 2009 that converted to a month to month tenancy on June 1, 2010 for a monthly rent of $1,600.00 due on the 1st of each month with a security deposit of $800.00 paid. The parties agreed that a pet damage deposit was also paid in the amount of $800.00 and that rent at the end of the tenancy was $1,865.00.

The tenancy ended when the tenant vacated the rental unit on December 1, 2021.

In her written submissions, the tenant has provided a letter dated December 1, 2021 that states, in part:

> "Today, December 1, 2021 I provided my landlord with notice to terminate my tenancy effective immediately. I did this because after altering me on October 4, 2021 of eviction and suggesting I look for alternate accommodations on October 14, 2021, Mr. Woo continued to provide official notice – leaving me in a situation of knowing I had to move, but unable to move ahead without knowing when."

The tenant submitted that the landlord had approached her and told her that his son was thinking of moving into the rental unit and that he would consider continuing the tenancy if she we would agree to a rent increase $800.00 per month. The tenant submits that she repeatedly asked the landlord, over a period of the next month and a half, to provide her with a date and a Notice of Eviction.

The tenant submits that as a result of this she suffered a lot of stress and could not "experience 'quiet enjoyment' of my suite." After the landlord refused to provide her with

notice, she states, she took it upon herself to secure new accommodations which was available to her effective December 1, 2021.

The tenant seeks compensation in an amount equivalent to 12 month's rent or $22,380.00 for the landlord's breach of their obligation to ensure quiet enjoyment because of the stress she underwent for this period of a month and a half. She makes this claim because she says the landlord failed to act in good faith by trying to extort a rent increase and not giving her a Two Month Notice to End Tenancy for Landlord's Use of Property or providing her with a move out date despite her asking at least 8 times.

The landlord submitted that he was not trying to extort anything from the tenant, rather he was laying out what circumstances he was facing with his son. He supports his son by providing assistance with their rent and his son's circumstances had changed where he needed to find larger accommodation.

The landlord provided that they were looking at too options. One where he would "subsidize" his son by providing him with cash in a projected amount of $800.00 for his son to find larger accommodation or he could have his son move into the rental unit. If the option was to have the son live elsewhere and be subsidized by the landlord, then the landlord wanted to defray those costs by increase the rent in this unit.

The landlord confirmed that they did not issue a Two Month Notice to End Tenancy for Landlord's Use of Property at any time and that a decision had not been made on what the landlord's son wanted to do before the tenant moved out.

The landlord submitted that they had not been informed that the tenant had found new accommodation or that she, in fact, planned to move out of the rental unit until after she had moved out. With no rent paid for December, they received notice that the tenant had moved on December 1, 2021. The landlord submits that the tenant failed to provide notice of her intent to move and as such, the earliest she could have ended the tenancy was February 1, 2022, based on the Notice she provided on December 1, 2021.

The landlord seeks the payment of rent for the months of December 2021 and January 2022 in the amount of $3,730.00.

The parties agree the tenant provided her forwarding address to the landlord by email on December 17, 2021. The tenant submitted her Application for Dispute Resolution seeking return of the security and pet damage deposit on December 1, 2021. The landlord, as noted above, submitted their Application for Dispute Resolution on January 27, 2022, seeking to retain the security deposit.

The landlord wrote in their written submission that they:

> "did not return the deposit or make his own claim for it since the Applicant had raised the issue for adjudication herself. The landlord intended to wait for the hearing to have the adjudicator decide the issue."

The landlord also seeks to recover $1,600.00 for baseboard and carpet replacement in regard to damage caused to the rental unit by the tenant's pet. The landlord submits that during the move out inspection on December 2, 2021 the tenant explained the damage to the baseboards was caused by the carpet cleaner and that the landlord was willing at that time to let the carpet stains go unaddressed.

However, since the tenant vacated the rental unit the landlord learned that the damage to both the baseboards and the carpet resulted from the tenant's cat and they seek to retain both the pet damage deposit and security deposit totalling $1,600.00 instead of pursuing the actual costs for repairs totalling nearly $5,000.00.

In support of this claim the landlord has submitted photographic evidence as well as invoices for the baseboard and carpet replacement costs. The landlord did not submit a Condition Inspection Report detailing the condition of the rental unit at the start or end of the tenancy.

Analysis

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.

I note that both parties make several references to either "good faith" and/or "bad faith", however, in relation to issues under the Act, the issue of good faith is only relevant in the event a landlord **has issued** a Two Month Notice to End Tenancy for Landlord's Use of Property **and** the tenant disputes that Notice on the grounds that they don't believe the landlord **intends** to use the property in the manner stated on that Notice or that they have an ulterior motive to end the tenancy.

As none of the compensation sought by either party in this case relates to the landlord issuing a Two Month Notice, because both parties agree that no such notice was issued, the issue of "good faith" or "bad faith" is not relevant. However, I acknowledge that both parties have used these terms to provide clarity on their understanding of the events over the last several months of the tenancy.

Section 49 (2) states subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

> (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
>
> (i) not earlier than 2 months after the date the tenant receives the notice,
> (ii) 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, and
> (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
>
> (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
>
> (i) not earlier than 4 months after the date the tenant receives the notice,
> (ii) 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, and
> (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 49 (3) states a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* states a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

In addition, the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that:

> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
> (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

From the testimony of both parties, I find that the landlord, at no time, provided the tenant with a Two Month Notice to End Tenancy for Landlord’s Use of Property. As such, I find the tenant is not entitled to compensation related to a Two Month Notice to End Tenancy for Landlord’s Use of Property as contemplated under Sections 49 and 51.

Section 28 of the *Act* stipulates that 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]; and
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 43 of the *Act* allows a landlord to increase rent only up to an amount calculated in accordance with the regulations, as ordered by the director, or as agreed to by the tenant in writing.

The tenant seeks her claim for $23,380.00 as she feels she suffered a loss of quiet enjoyment. In order to be successful, in this claim the tenant must provide sufficient evidence to establish, as noted above, that the landlord breached the *Act*, regulation or tenancy agreement, that she suffered a loss as a result of this breach, the value of that loss, and that she took steps to mitigate the loss.

As per Section 43 of the *Act* a landlord is allowed to seek a rent increase in an amount that exceeds the annual allowable amount by a mutual agreement. As such, I find the landlord having a discussion with the tenant about increasing rent, even in the amount of $800.00 per month is not a breach of Section 43.

Furthermore, the landlord has a right under Section 49 to end the tenancy if he wanted his son to move into the rental unit. Again, informing the tenant of this as a consideration the landlord has before them is not a breach of Section 49.

I am satisfied from the landlord’s submissions that the landlord was attempting to let the tenant know what they were considering before they took action of any kind and giving the tenant an opportunity to consider the options that the landlord was proposing.

The fact that the tenant then started demanding the receipt of a Notice to End Tenancy and a specific date of when the tenancy would end while the landlord had still not decided if or when they would be issuing a notice to end tenancy is not in any way a breach of Section 28 of the *Act*.

Section 28 provides protection from breaches of privacy such as protection from inappropriate use of security cameras or distribution of personal information; unreasonable disturbances, such as noise or abuse from landlords or other occupants; exclusive possession of the rental unit and use of common areas.

The tenant has provided no evidence that the landlord has breached any of these provisions. Furthermore, a landlord cannot be held responsible for a tenant's anxiety or feelings about discussions they have over rights and obligations that the landlord is allowed under the *Act*.

In addition, even if the landlord had violated any section of the *Act*, the tenant's claim of $23,380.00 as compensation for a period of a month and a half is exorbitant and not supported by any rational explanation of the value of the loss.

Therefore, I dismiss this portion of the tenant's claim in the amount of $23,380.00, without leave to reapply.

Section 45(1) of the *Act* allows a tenant to 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.

Section 45(3) allows that ff 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.

As there is no evidence before me that would establish that the landlord was in breach of a material term or that the tenant provided the landlord with a notice of such a breach, I find the only allowable way for the tenant to end this tenancy was to provide a notice to end tenancy in compliance with Section 45(1) of the *Act*.

As rent was due on the first of each month, under the tenancy agreement, I find the earliest effective date of a Notice to End Tenancy provided by a tenant to a landlord issued on December 1, 2021 would be January 31, 2022.

As a result, I find the tenant is responsible for the payment of rent for the months of December 2021 and January 2022 and I award the landlord $3,730.00.

Section 37 of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must:

a) Leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard to the landlord's claim for repairs to the baseboards and carpeting the landlord must provide sufficient evidence to prove that the damage occurred during the tenancy. In order to establish this the landlord must present evidence of the condition of the rental unit at the start and end of the tenancy. As the landlord has not submitted any evidence of the condition of the rental unit at the start of the tenancy, I find the landlord has failed to establish that the damage occurred during the tenancy.

Furthermore, even if the landlord had provided sufficient evidence that the damage occurred during the tenancy, Residential Tenancy Policy Guideline 40 (Useful Life of Building Elements) sets the useful live of carpets at 10 years. This tenancy lasted 12 ½ years with the same carpeting. As such, any approved claim for compensation for carpet replacement would be discounted by 100%.

Based on the above, I dismiss the landlord's claim for compensation for replacement of baseboards and carpeting, without leave to reapply.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In regard to the tenant's claim for return of the security deposit and the landlord's request to retain the deposit, I note that the landlord submitted that they did not apply to retain the security deposit within 15 days of receipt of the forwarding address (December 17, 2021) because they were aware that the tenant had already applied to recover the deposit.

However, I note that there is no provision under Section 38 absolving the landlord of filing an application to claim against the deposit or returning the deposit if the tenant has applied to have it returned. As such, I find the landlord was require to either submit their Application or return the deposit to the tenant no later than January 3, 2022 (the first date the Residential Tenancy Branch was open after the actual deadline of January 1, 2022).

As noted above, the landlord submitted their application on January 27, 2022. Therefore, I find the landlord failed to comply with their obligations under Section 38(1) of the *Act* and the tenant is entitled to return of double of both deposits in the amount of $3,200.00, pursuant to Section 38(6) of the *Act*.

As both parties were equally successful in their respective claims the awarding of recovery of the filing fee to both files is a moot point and I dismiss their claims to recover the respective filing fees.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order to the landlord in the amount of **$530.00** comprised of $3,730.00 rent owed less $3,200.00 granted to the tenant for double the amount of the security and pet damage deposits.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 25, 2022

Residential Tenancy Branch