



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, FFL
Tenants: MNSD, MNETC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Both parties acknowledged receipt of each other's evidence and hearing packages and were prepared to proceed with this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage to and/or cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of the security deposit and for compensation related to a Notice to End Tenancy for Landlord's Use of Property 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 *Act*.

Background and Evidence

The tenants submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on February 1, 2018 for a 5 month and 16 day fixed-term tenancy beginning on March 15, 2018 that converted to a month to month tenancy on March 16, 2018, for a monthly rent of \$1,650.00 due on the 15th of each month, with a security deposit of \$825.00 paid.

The parties confirmed that at the end of the tenancy rent was in the amount of \$1,691.00 per month;

- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on August 1, 2021 with an effective date of October 1, 2021 citing the rental unit was to be occupied by the landlord or the landlord's spouse;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form signed by the female tenant and a witness to the service, on August 25, 2021 stating that the tenant's served the landlord with their forwarding address on August 25, 2021 at 10:15 a.m. by attaching it to the door or other conspicuous place where the person resides or carries on business as a landlord;
- A copy of a letter dated August 25, 2021 with the tenants' partial forwarding address provided;
- A copy of an email from the female tenant to the landlord dated October 7, 2021 acknowledging the incomplete forwarding address previously provided and providing their complete forwarding address; and
- A copy of a Condition Inspection Report (CIR) dated August 11, 2021 recording the condition of the rental unit at the end of the tenancy. No information is provided on this CIR regarding the condition of the rental unit at the start of the tenancy.

The landlord submitted into evidence the following relevant documents:

- A screenshot of a text message dated July 16, 2021 at 2:18 p.m. from the male tenant stating:
 - "I gave Dylan our notice this morning. I am not paying you an entire month of rent over one day....you know that this is not fair. We were blind sided by Dylan with the verbal notice and proactively found a perfect place for our family in the hot rental market and were lucky to get a place. We can't afford to pay you next month as well as our new rent. I don't think its worth taking us to court over as we have a few tricks up our sleeve and I don't think it would be good for either parties. You ca keep our damage deposit if you would like Thanks" [reproduced as written];
- A copy of an invoice from the landlord's cleaner, dated August 26, 2021, for 27 hours of cleaning at \$18.00 per hour for a total of \$486.00 and \$55.00 for cleaning supplies for a total cleaning bill of \$541.00;
- A copy of an invoice dated October 6, 2021, for garbage removal in the amount of \$470.61; and
- Undated screenshots of estimated purchases from an unidentified store totalling both \$100.31 and \$273.63. The screen shots include the following vertical blinds at \$89.56: Masonite hollow core door (no price); handrail at \$55.52; and handrail brackets at \$15.94.

The parties agreed that the landlord informed the tenants, verbally, of her intent to end the tenancy so that she could occupy the rental unit. The tenants submitted that the July 16, 2021 text message was informing the landlord of their intention to move out but that it was not their notice to vacate and that they moved out solely based on the landlord's Two Month Notice.

The landlord confirmed that despite receiving the tenants notice they still issued the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property on August 1, 2021. The parties agreed that the tenants informed the landlord on August 6, 2021 that they had vacated the rental unit. The parties completed a move out condition inspection on August 11, 2021.

The landlord wrote on her Application for Dispute Resolution:

"During our walkthrough inspection after the tenant move out, the unit had noted damage to the floors, a bedroom door, a bannister, the front yard, the back yard, and the walls. As well as missing items including window coverings from the dining room, an interior door, and personal property was left in the in the back yard including a child's trampoline and hockey net. The unit's walls and carpets were clearly destroyed by canine feces, and it looked nearly inhabitable."
[reproduced as written]

The CIR, submitted into evidence by the tenant, records a number of deficiencies, primarily that the unit was dirty in a number of areas; that there was some damage to the lawn; some garbage (backyard); damage to a door and banister. The tenant signed the document indicating that she did not agree with the CIR. In support of her claim the landlord has submitted the following invoices and/or estimates:

- A copy of an invoice for cleaning stating 27 hours at \$18.00 per hour and \$55.00 for supplies for a total of \$541.00;
- A copy of an online order for vertical blinds (\$89.56); moulding (\$55.52); and a handrail bracket (\$7.97); and
- A copy of an invoice for garbage removal in the amount of \$470.61.

Despite the total amount of the landlord's invoices/estimates exceeding the amount of the security deposit, the landlord seeks only to retain the amount of the deposit against the claims.

The tenants submitted that the condition of the rental unit was not as the landlord described it. Specifically, the tenants submitted that there was no dog feces in the house; no blinds had been removed and that the garbage that was left behind was not theirs but rather had been there throughout the tenancy.

Analysis

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 order to be eligible for this compensation, I must first determine how the tenancy ended. That is to say, I must determine if the tenancy ended as a result of the tenants receiving a notice to end tenancy from the landlord, or if it ended because the tenants gave their own notice to end tenancy.

In order for a notice to end tenancy to be effective a notice to end to end tenancy must comply with the requirements set forth in Section 52 of the *Act*. Section 52 requires that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2,
- and
- (e) when given by a landlord, be in the approved form.

Despite the landlord's submission of the text message dated July 16, 2021 from the male tenant, I find that this text message does not include the requisite components of a notice to end tenancy. Specifically, the text message does not include the address of the rental unit or state the effective date of the notice. As such, I find that the July 16, 2021 text message does not constituted a Notice to End 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.

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.

Such a notice must also comply with the requirements set forth under Section 52 of the *Act*. I am satisfied that the Two Month Notice to End Tenancy for Landlord's Use of Property complies with these requirements. I also accept from the testimony of both parties that the landlord served this notice to the tenants on August 1, 2021.

As a result, I find the tenancy ended pursuant to the landlord's Two Month Notice and the tenants are entitled to compensation equivalent to one month's rent, in the amount of \$1,691.00, pursuant to Section 51 of the *Act*.

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, whichever is later, 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.

From the submissions of both parties, I find that the tenancy ended on August 6, 2021 and that the tenants provided the landlord an incomplete forwarding address on August 25, 2021 and followed up with the complete forwarding address on October 7, 2021 (by email).

I note that the landlord submitted her Application for Dispute Resolution seeking to retain the security deposit on September 4, 2021. If I allow that the tenant's provided their forwarding address on August 25, 2021 then the landlord had until September 9, 2021 to file their claim. As such, I find the landlord filed their claim within the required timeframe outlined in Section 38(1) of the *Act* and the landlord is not required to pay the tenants double the amount of the deposit.

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.

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.

As the landlord has provided no evidence, whatsoever, of the condition of the rental unit at the start of the tenancy and despite the submission of the CIR from the end of the tenancy from the tenants, I find the landlord cannot establish that any damage to the unit was caused by the tenants or during the tenancy.

As such, I find the landlord's claims for replacement binds; moulding; and the handrail brackets are dismissed without leave to reapply.

In regard to cleaning and removal of garbage the landlord does not, necessarily, need to provide evidence of the cleanliness of the unit at the start of the tenancy, rather only whether or not the tenants left the unit reasonably clean.

In this case, however, the tenants have submitted testimony that some of the garbage had been left by previous tenants and/or the landlord at the start of the tenancy. I also note that at the time of the move out condition inspection the tenant indicated on the CIR that she did not agree with the landlord's recording of the condition.

In such circumstances, I find that it is insufficient to rely solely on the CIR as any sort of proof of the requirement for cleaning. In addition, the tenants specifically rebutted the landlord's assertion that there was dog feces in the rental unit. The landlord could have taken photographs or provided additional evidence to confirm her claim. As such, I am not satisfied the landlord has established the rental unit required cleaning or garbage removal.

Therefore, I also dismiss the landlord's claims for cleaning and garbage removal without leave to reapply.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution, in its entirety without leave to reapply.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,616.00** comprised of \$1,691.00 compensation owed for Two Month Notice to End Tenancy for Landlord's Use of Property, \$825.00 return of security deposit, and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: April 14, 2022

Residential Tenancy Branch