Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, FFT / MNDCT, MNETC, FFT**

Introduction

This hearing dealt with two applications of the tenants pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for $30,000 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $9,894.87 pursuant to section 67; and
- authorization to recover the filing fees for these application from the landlords pursuant to section 72.

The tenants listed different respondents on the applications: "Rental Division ABC Inc." and "ABC Inc. RP Management Agent" (full names on the cover of this decision). DT stated that "RP Management Agent" is the agent of ABC Inc. The tenants did not disagree. As such, I understand that the proper identity of the landlord, in both applications, is ABC Inc. I order that the applications be amended to correct the landlord's name to ABC Inc.

DT also stated that ABC Inc. no longer represented the owner of the rental unit and suggested that ABC Inc. was not properly a party to these applications. However, the tenancy agreement and the notice to end tenancy used to end the tenancy both list ABC Inc, with RP Management as its agent, as the landlord. As such, I find that the tenancy agreement is between the tenants and ABC Inc., and that ABC Inc. is properly named as a landlord in this application (herein after, the landlord). Despite this, I found it appropriate to allow the owner of the rental unit to attend the hearing and give evidence, as she likely has a vested interest in the outcome of the applications, and as neither party objected.

The tenants stated, and DT confirmed, that they serve the landlord with their notices of dispute resolution proceeding packages and supporting documentary evidence.

DT stated that the landlord served the tenants with their evidence package via registered mail. They provided a tracking number reproduced on the cover of this decision which showed that Canada post attempted to deliver the package on March 30, 2023 but was unsuccessful. Canada Post left a notice card, but the package was not retrieved. The tenants confirmed that the landlords sent the package to their mailing address. As such, I find that the tenants have been served with the required documents in accordance with the Act. The tenants consented to the owner emailing them copy of the landlord's documents, so they could follow the landlord's submissions.

Issues to be Decided

Are the tenants entitled to:

- a monetary order equal to 12 months' rent?
- a monetary order to recover an overpayment of utilities?
- the return of double the security deposit?
- recover their filing fees?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is the upper level of a two-level single detached house (the House). The parties entered into a written tenancy agreement starting March 1, 2020. Monthly rent was $2,200 and is payable on the first of each month. The tenant paid the landlord a security deposit of $1,100, excluding hydro and natural gas. The landlord returned $775 of the security deposit and retains the balance.

1. Are the tenants entitled to a monetary order equal to 12 months' rent?

On August 29, 2022, the landlord served the tenants with a two month notice to end tenancy for landlord's use (the Notice). The Notice listed an effective date of October 31, 2022 and specified that the father or mother of the landlord would be moving into the rental unit. The tenants did not dispute the Notice and moved out of the rental unit on October 31. The tenants provided the landlord their forwarding address, in writing, on that day, after completing the move-out condition inspection with the landlord.

The tenants stated that after they moved out of the rental unit their former neighbors advised them that the rental unit was being renovated in November. They stated that they attended the rental unit “a few times” in November to pick up mail but no one was ever home.

The tenants testified that on January 8, 2023, the House was listed for rent on Airbnb. They submitted screenshots out the Airbnb mobile app which they say indicated that the entire house is available for rent on Airbnb.

DT testified that the owner gave him instructions to serve the Notice two days prior to it being served. He stated that she told him her father would be moving into the rental unit because he was selling his old house.

The owner testified that:

- She moved into the rental unit after the tenants vacated, and not her father.
- She loves the area the rental unit was located in and wanted to live in that area.
- The residence where she and her husband lived in before the rental unit was full of mould, which caused health problems for her husband.
- Her father is a co-owner of the property.
- She told her father that she needed to move into the rental unit, and he agreed that she could.
- She repainted and cleaned the rental unit prior to moving in, moved in in mid-December 2022.
- She does not rent the entire rental unit out on Airbnb.
- She rents out bedrooms in the rental unit on Airbnb for supplemental income, but that she resides in the rental unit concurrently with the Airbnb tenants.
- She rents the lower unit out on Airbnb.

The owner provided numerous pieces of documentary evidence, including photographs, food delivery receipts, Amazon receipts, and utility bills supporting her testimony that she lives in the rental unit. She did not provide any documentary evidence support the other parts of her testimony.

Based on this evidence, I accept the owner currently lives in the rental unit.

However, this does not mean that the tenants’ application for an amount equal to 12 times the monthly rent fails. The landlord must pay the tenants this amount if it does not establish that rental unit was used for the reason stated on the Notice for ending the tenancy within a reasonable period after its effective date and for at least six months. A

landlord may be excused from making this payment if they can show extenuating circumstances existed which prevented it from using the rental unit for the stated purpose: section 51(2) of the Act.

The landlord fails to meet these criteria in two different ways.

First, as stated above, the landlord is a corporate entity. The tenancy agreement and the Notice both list ABC Inc., with RP Management as its agent, as the landlord. The owner is not a party to the contractual agreement by which the rental unit is rented to the tenants. ABC Inc. does not have a parent who could occupy the rental unit. It cannot occupy the rental unit itself. It is unlikely that ABC Inc. would have been able to end the tenancy by way of a two-month notice to end tenancy, barring the rental unit being sold to a non-corporate entity who requested such a notice be served.

As such, the stated purpose for ending the tenancy was not accomplished. ABC Inc's father or mother did not move into the rental unit.

Second, in the event that I am mistaken that ABC Inc. is the landlord, and the owner ought to be considered the landlord, I would still find that the rental unit was not used for the purpose stated on the Notice. The owner's father or mother did not occupy the rental unit. The owner and her husband did.

DT testified the owner directed him to indicate that the owner's father would be occupying the rental unit and the owner did not give any evidence to the contrary. I accept this evidence as true. Accordingly, I do not find there was an inadvertent error on DT's part when completing the Notice.

Rather, I find it more likely than not that, at some point later, the owner changed her mind and decided that she wanted to move into the rental unit. The reasons suggested by the owner (that she loved the area and that her prior residence caused health problems for her husband), do not rise to the level of "extenuating circumstances", as these reasons could have been anticipated before the Notice was issued. No evidence was provided which would have suggested that there was any material change in the owner's or her father's circumstances after the Notice was issued which would account for the owner moving into the rental unit instead of her father.

For these two reasons, I do not find that the rental unit was used for the purpose stated on the Notice within a reasonable period after the effective date, or at all.

I order the landlord to pay the tenants $26,400 ($2,200 x 12 = $26,400).

2. Are the tenants entitled to a monetary payment to recover an overpayment of utilities?

The parties agree that the monthly rent does not include electricity or natural gas. The tenants stated that they were told at the start of the tenancy that the rental unit had separate billings from the lower unit for these utilities. As such, they paid the full amount of the utilities bills when they received them.

The tenants stated that they later discovered that the House received a single utility bill for both units. They testified that, after the first month of their tenancy, the lower unit was not rented out to a long term tenant, but was rented out on Airbnb "almost every day since the beginning of 2021" and the owner's father spent one or two nights per week in the lower unit. They argued that they have been paying the downstairs utilities bills for the duration of the tenancy and are seeking a reimbursement of 50% of the utilities they paid for the entire duration of the tenancy ($6,894.87).

The owner denied that the lower unit was rented out frequently on Airbnb. She stated that she rented it once in March 2022, and that her father would spend the "occasional" night in the lower unit, but not with the frequency alleged by the tenants.

DT stated that, at the start of the tenancy, he told the tenants that the House was on a single utilities bill and that the lower unit would not regularly be occupied. He stated that the tenants agreed to pay the entirety of the hydro and natural gas utilities on this basis.

The tenancy agreement does not make any mention of separate meters or bills for the upper and lower unit. The tenants have not provided any documentary evidence to support their claims that the lower unit was frequently occupied by the owner's father or by Airbnb guests.

I conclude the majority of the charges on the hydro and natural gas bills are the result of the tenants' usage. I accept DT's testimony that he advised the tenants that they would be responsible for the whole House's hydro and natural gas bill at the start of the tenancy, and that the tenants accepted this as a term of the tenancy agreement. In the circumstances, I do not find this term unconscionable.

Accordingly, the tenants are not entitled to any retroactive reduction of their utility bills. I dismiss this portion of their application without leave to reapply.

3. Are the tenants entitled to the return of double the security deposit?

The parties agree that:

- The landlord has returned $775 of the security deposit and retains $325.
- The tenants provided the landlord their forwarding address, in writing, at the end of the tenancy.
- The landlord has not applied to the Residential Tenancy Branch (the RTB) to keep any portion of the security deposit.

The tenants testified that they completely cleaned the rental unit at the end of the tenancy and that there was not any damage to it. They demand the return of the full amount of the security deposit.

The owner testified that the tenancy agreement states: “tenant is responsible for professional carpet cleaning at the end of the tenancy and giving a copy of the receipt to the landlord”. She stated that the tenants never did this, or did not adequately do this, and that the carpet needed to be cleaned because of paint drips on it caused by the tenants when they repainted some of the walls.

Within 15 days of the end of the tenancy or receiving the tenants’ forwarding address, the landlord was required to either return the full amount of the security deposit or make an application to the RTB claiming against it: section 38(1) of the Act.

The landlord did not do this. As such, it is required to pay the tenants an amount equal to double the security deposit: section 38(6) of the Act.

The tenants’ entitlement to this amount is mandatory, unless specifically waived: RTB Policy Guideline 17. The tenants did not waive this entitlement.

The doubling calculation is based on the entire amount of the security deposit, and then the amount returned to the tenants is deducted, and the amount of increase accrued on the security deposit is added: RTB Policy Guideline 17.

The RTB Deposit Interest Calculator shows that $0.00 interest was accrued on the $1,100 deposit between the start of the tenancy and October 31, 2022 and that $7.23 of interest was accrued on $325 balance of the deposit from October 31, 2022 to May 3, 2023.

As such, I order the landlord to pay the tenants $1,432.23 ($1,100.00 x 2 = $2,200.00; $2,200.00 - $775.00 = $1,425.00; $1,425.00 + 7.23 = $1,432.23).

4. Are the tenants entitled to recover their filing fees?

As the tenants have been partially successful in their applications, they are entitled to recover one of their two filing fees.

Conclusion

Pursuant to sections 62, 67, and 72 of the Act, I order that the landlord to pay the tenants $27,932.23, representing the following:

Description	Total
Security deposit doubling and interest (less amount returned)	$1,432.23
12 times monthly rent	$26,400.00
Filing fee	$100.00
	$27,932.23

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, 2023

Residential Tenancy Branch