Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding DOMIONION EQUIPMENT CORP LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: MNDCT, MNETC, FFT
For the landlord: MNDL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant VF (the Tenant), agent for the tenant JL and the landlord's agents DW and HW attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the applications and evidence (the materials).

Based on the testimonies I find that each party was served with the respective materials in accordance with section 89(1) of the Act.

Preliminary Issue – Named parties

Both applications list the landlord as Dominion Equipment Corp. Ltd. (hereinafter, the Landlord).

The Landlord's application lists respondents tenants JL and VI.

Both parties agreed that JL was not a tenant.

Pursuant to section 64(3)(a) of the Act, I amended the Landlord's applications to list only respondent Tenant VF and to correct the spelling of her first name.

Issues to be Decided

Is the Tenant entitled to:

1. a monetary order for compensation for damage or loss?
2. a monetary order in an amount equivalent to twelve times the monthly rent?
3. an authorization to recover the filing fee?

Is the Landlord entitled to:

1. a monetary order for compensation for damage or loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Landlord's and the Tenant's claims and my findings are set out below.

Both parties agreed the tenancy started on July 2, 2009 and ended on July 31, 2022. Monthly rent when the tenancy ended was $1,427.40, due on the first day of the month. The Landlord returned the security deposit.

Both parties agreed the Landlord served and the Tenant received the two month notice to end tenancy for landlord's use dated May 30, 2022 (the Notice) on the date it was issued. The Notice, submitted into evidence, indicates the DW's child planned to use the rental unit and the effective date was July 31, 2022.

The Tenant is seeking $648.00, as she paid the amount claimed for an ambulance to move her partner when the tenancy ended. The Tenant decided not to dispute the Notice, because if she lost the application for dispute resolution, she believed that she would have to vacate the rental unit 24 hours after the decision.

DW affirmed that he served the Notice in good faith.

The Tenant is seeking $17,128.80 (12 times the monthly rent of $1,427.40), as the DW's stepchild did not occupy the rental unit.

DW stated the rental unit belongs to the Landlord and the DW owns all the Company's voting shares.

DW served the Notice for his 27-year-old stepson CO to move in, as CO had criminal justice and mental health problems. CO was released on bail and was required to live in a house without internet connection. CO could not rent an apartment and promised DW that he would occupy the rental unit for at least 6 months.

DW testified that he did not want CO to live with him because they did not get along well when they lived together and because DW would not be able to have internet connection in his house if CO lived with him.

DW and CO's mother HW helped CO to move to the rental unit on August 1, 2022. DW and HW are married. DW said that CO moved out on January 17, 2023, as CO's girlfriend's father passed away and CO decided to move in with his girlfriend. CO no longer talks with the DW and HW. DW and HW affirmed they could not prohibit CO from moving to his girlfriend's house, as CO is of legal age.

The Landlord submitted a letter dated May 12, 2023:

> BC Rental Tenancy Branch Arbitrator
> Re: Residence of CO
> To the BC Rental Tenancy Branch Arbitrator and related parties involved in this matter:
> This letter is to confirm the residency of CO at [rental unit's address].
> CO was approved to reside at this address, from the period between August 2, 2022 through January 17, 2023. I am advised that this address is owned by Dominion Equipment Corp/DW, however I do not have any personal information regarding the ownership of the address in question. Our office confirmed CO physical presence at the above-noted address on August 9, 2022.
> Sincerely,
> Bail supervisor

DW painted and cleaned the rental unit in August 2022, and changed the hot water tank and the windows, as they were old.

DW decided to build a suite in the rental unit's garage, so CO could permanently live in the suite, as the rental unit is a 1,200 square feet single-family house and CO did not need such a big space permanently. DW obtained a permit for the suite's construction in October 2022.

The Tenant submitted a letter issued by the city where the rental unit is located on March 10, 2023: "Application for the building permit was received on August 15, 2022, the permit was issued September 22, 2022. The Building permit is for conversion of an existing garage into a secondary suite."

DW stated that 90% of the renovation that he did was the construction of the suite in the garage.

DW re-rented the rental unit on April 15, 2023 for $2,600.00 and the garage suite on May 1, 2023.

DW testified that between January 17, 2023 and April 15 nobody lived in the rental unit, but DW was there almost daily because of the suite's construction.

The Tenant said that she drove by the rental unit often and she observed that CO occupied the rental unit until October 26, 2022. The rental unit did not have lights on, there was no Christmas decoration, and the rental unit was empty after October 26. The rental unit's neighbours informed the Tenant that CO lived in the rental unit for a short period of time and moved out.

The Tenant submitted 84 photographs showing the rental unit between August 6, 2022 and January 6, 2023. The Tenant affirmed the photo dated December 12, at 8:20 pm, shows the master bedroom did not have furniture.

DW stated the photographs show the rental unit on 23 days, and this is only 7.8% of the 180 days the rental unit had to be occupied. CO spent a lot of time in the basement playing video games or in his bedroom, DW could not instruct CO to turn lights on or to put Christmas decorations in the rental unit.

The Landlord is seeking $15,007.49, as the Tenant damaged the rental unit's yard. The tenancy agreement states: "3. The tenant agrees to perform all yard work required to maintain the property in reasonable conditions at all times."

DW testified the rental unit was in immaculate condition when the tenancy started and when the tenancy ended the yard was badly damaged, as the Tenant did not maintain

the yard. The Landlord submitted a quotation dated May 15, 2023 for $15,960: “description of work to be done: removal of 1400 square feet of lawn, removal of 6 trees, new top soil and sod”, and a second quotation dated May 09, 2023 for $13,508.08 for removal of 410 square meters of lawn, 6 trees and 100 square meters of topsoil.

DW said that he took 10 to 12 loads of dead brushes, trees, branches, and weeds from the yard, paid “probably at least $500.00 for diesel” and worked at least 100 hours to repair the yard.

The Tenant affirmed DW verbally agreed to do the yard maintenance work. The Tenant emailed DW on April 21, 2020, January 4, June 12 and October 28, 2021 stating the yard needed maintenance, and DW offered to do the maintenance work. DW stated he agreed to do the maintenance work on these four dates because he was nice, but he did not agree to change clause 3 of the tenancy agreement.

DW did not inspect the rental unit after he received the emails regarding the yard maintenance work because he did not want to disturb the Tenant.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent’s non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim. However, in some situations the arbitrator may determine the onus of proof is on the other party.

12 month compensation

Per section 51(2) of the Act, the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Section 49(1) of the Act states that a family corporation is a corporation in which all the voting shares are owned by one individual.

Based on the DW's convincing and undisputed testimony, I find the rental unit's owner is the Landlord and that the Landlord is a family corporation.

Section 49(4) states that a family corporation may end a tenancy "in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." Section 49(1) states that the child of the landlord's spouse is considered a close family member.

Based on the DW's convincing and undisputed testimony, I find the Landlord served the Notice for DW's child CO and that CO is a close family member, per section 49(1) of the Act.

Section 51(2) of the Act states that a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished.

Policy Guideline 2A states that: "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

I find the repairs completed by the DW (clean and paint the house, improve the poorly maintained yard, change the windows and hot water tank) are minor repairs, as DW completed them in August 2022 when CO was occupying the rental unit.

I find that the DW sufficiently explained that he decided to build a suite in the rental unit's garage for CO to permanently use the suite after the 6 months occupancy period. The discrepancy in the parties' testimony about the date the suite construction permit was issued is a minor discrepancy, as DW testified that he received the permit in October 2022 and the Tenant proved that it was available on September 22.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy.

RTB Policy Guideline 50 provides examples of extenuating circumstances:

> E. 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
>
> (emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

I accept the uncontested testimony that CO occupied the rental unit from August 1, 2022 to October 25, 2022 and that CO promised DW that he would occupy the rental unit for 6 months.

I find that not having lights on and Christmas decorations does not prove, on a balance of probabilities, that the rental unit was empty, as occupants are not required to have lights on at night or Christmas decorations. DW explained that CO likes to spend time in the basement playing video games. The photo dated December 12, 2022 shows lights on at 8:20 pm and that there is some furniture in the house.

The letter dated May 12, 2023 states that CO was approved by his bail supervisor to live in the rental unit until January 17, 2023.

Based on the convincing testimony offered by DW and the letter dated May 12, 2023, I find the Landlord proved, on a balance of probabilities, that CO occupied the rental unit until January 17, 2023.

Based on the convincing testimony offered by the DW and HW, I find that CO informed DW that he moved out on January 17, 2023. I find that CO's decision is an extenuating circumstance for DW, as DW trusted that CO would occupy the rental unit for 6 months and that DW did not have control of CO's decision of moving out, as CO is of legal age.

As such, the Landlord is excused from paying the 12-month rent compensation under section 51(2) of the Act.

Ambulance cost

Based on the Tenant's undisputed testimony, I find the Tenant could have disputed the Notice and continued the tenancy until the RTB decided if the Notice is valid or not. I find the Tenant failed to prove a loss because the Landlord breached the Act.

Furthermore, as stated in the topic 12 month compensation, I found that CO occupied the rental unit from August 1, 2022 to January 17, 2023, as stated in the Notice.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, Regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Yard maintenance

Based on the tenancy agreement, I find the Tenant agreed to do all the yard work of the single-family rental unit. Clause 3 of the tenancy agreement is very specific ("agrees to perform all the yard work") and the rental unit was a single family house.

I note that Policy Guideline 1 states that "The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control." However, in the present case, the Tenant specifically agreed to do all the yard work.

The Tenant failed to prove, on a balance of probabilities, that DW agreed the Tenant no longer is required to perform all the yard work, as the parties offered contradictory testimony and the Tenant did not provide documentary evidence to prove her defence argument.

Policy Guideline 5 explains the duty of the party claiming compensation to mitigate the losses: “A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss.”

Based on the undisputed testimony, I find the Tenant breached clause 3 of the tenancy agreement by not doing the yard work and the Landlord suffered a loss.

Based on the parties’ testimony and the emails dated April 21, 2020, January 4, June 12 and October 28, 2021, I find DW was aware that the Tenant was not doing the necessary yard work.

I find the Landlord failed to mitigate the losses by not inspecting the rental unit and asking the Tenant to do the necessary yard work to maintain the yard. As such, I dismiss the Landlord’s claim for yard work. Furthermore, the Landlord did not pay the amount claimed and DW completed the yard repair on his own.

Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the above, considering the yard’s size referenced in the quotations and the undisputed testimony about the yard’s condition and DW’s work to repair the yard, I find that the Landlord is entitled to nominal damages in the amount of $1,500.00.

As such, I award the Landlord $1,500.00.

Filing fee and summary

As the Landlord was partially successful, I find the Landlord is entitled to recover the $100.00 filing fee.

The Tenant must bear the cost of the filing fee, as the Tenant was not successful.

In summary, the Landlord is entitled to $1,600.00.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a monetary order in the amount of $1,600.00.

The Landlord is provided with this order in the above terms and the Tenant must be served with this order. Should the Tenant 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: July 26, 2023

Residential Tenancy Branch