Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT
MNDL, FFL

Introduction

The original hearing was convened by telephone conference call at 1:30 pm on February 6, 2023. That hearing was adjourned, and an interim decision was issued by me on February 8, 2023. As a result, that interim decision should be read in conjunction with this decision. The reconvened hearing was attended by the Tenants and the Landlords. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

The parties agreed that the orders set out in the interim decision had been followed and acknowledged receipt of each other's documentary evidence, including documentary evidence argued to be new and relevant by the Landlords. As a result, and as neither party raised any arguments that the documentary evidence should be excluded or that

the documentary evidence now submitted by the Landlords was not new and relevant, I accepted it for consideration.

Issue(s) to be Decided

Are the Tenants entitled to 12 times their monthly rent under section 51(2) of the Act?

Are the Landlords entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit or property?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

The parties agreed that the Tenants were served with a Two Month Notice by the Landlords on January 9, 2022, and that the tenancy ended on March 31, 2022, as a result. They also agreed that $2,257.20 in rent was due each month at the time the tenancy ended. The Two Month Notice was signed and dated January 9, 2022, has an effective date of March 31, 2022, and states that the rental unit will be occupied by the Landlord or the Landlord's spouse.

The Landlords stated that they moved into the rental unit on April 29, 2022, which the Tenants disputed, as they believe the rental unit was simply staged and then sold by the Landlords but never occupied. Although the Landlords agreed that the rental unit was sold shortly after they moved in, and that they vacated the rental unit on June 17, 2022, they argued that they should be exempted from paying the Tenants 12 months compensation under section 51(2) of the Act for several reasons. First, the Landlords argued that because information on residential Tenancy Branch (Branch) forms and the website is inaccurate, they believed that they only had to move into the rental unit after the Tenants vacated, not that they had to live there for 6 months thereafter, in order not to owe the Tenants any compensation under section 51(2) of the Act.

Second, they argued that extenuating circumstances, specifically their lack of childcare in the community in which the rental unit is located and the lengthy commute from the rental unit to the daycare they secured in another community, forced them to sell the rental unit and move. The Tenants disagreed arguing that the Landlords never intended to comply with the Two Month Notice, which was only served on them after they refused to enter into a mutual agreement with the Landlords to end the tenancy so it could be

sold, and that they misunderstood the requirement to occupy the rental unit for at least 6 months. The Landlords disagreed, arguing that they changed their minds on which property to sell first in order to finance the remaining balance due upon completion of their new-build pre-construction home due to the potential changing market conditions, and that their child's grandmother was supposed to provide childcare but unexpectedly broke their arm and suffered a leg injury from a fall. As a result, they stated that they were left without childcare in the community where the rental unit is located. As a result, they stated they had to move as the commute from the rental unit to the daycare they secured near where their new-build pre-construction home is located, was too far away and therefore too long of a commute for their child.

The Landlords also argued that the Tenants failed to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of the tenancy. The Landlords stated that the Tenants had used the fireplace as a primary heat source and moved a temperature monitor forcing it to operate well above its intended temperature. The Landlords argued that this caused damage to the fireplace, walls, and paint. The Landlords also stated that the Tenants were responsible for water damage under the sink and on the garage ceiling. As a result, they sought recovery of $522.38 paid to repair the fireplace, $330.75 in cleaning costs, and $4,400.00 in minor wall repair and painting costs. The Tenants denied responsibility for the amounts claimed, stating that the damage under the sink was the result of a faulty braided water line, that the ceiling damage was due to a shower leak from improperly installed grout/caulking, and that the fireplace stopped working due to reasonable wear and tear of parts and because it had never been properly maintained by the Landlords as required.

Although the Tenants agreed that they moved a heat sensor several feet, they denied using the fireplace as their only heat source, denied causing damage to the fireplace, or forcing it to operate beyond capacity or it's intended limits, and denied that the paint chipping and wall cracks were related to the fireplace. Instead, the Tenants argued that the cracks were due to the settling of the building over time and that the paint deterioration was due to reasonable wear and tear as it was past it's useful life.

The parties also disagreed about whether the Tenants were responsible for $5,674.68 in carpet replacement costs. The Landlords stated that the Tenants damaged the carpet, which therefore needed to be replaced. Although the Tenants did not deny that there were several carpet stains, they stated that the Landlords advised them prior to even seeing the rental unit at the end of the tenancy that they did not need to clean them as the carpets were being replaced. As a result, the Tenants denied responsibility

for the carpet replacement costs. Substantial documentary evidence was submitted by the parties in support of their testimony and submissions.

Analysis

Tenants' Application

The Landlords acknowledged that they failed to occupy the rental unit for at least six months duration within a reasonable period after the affective date of the notice. However, they argued that they should nevertheless be exempted from owing the Tenant's compensation under section 51(2) of the Act because Branch information regarding their obligation to occupy the rental unit for a specified period was inaccurate, and extenuating circumstances prevented them from occupying the rental unit for the required duration. I dismiss both arguments as set out below.

Although there may be differences between information contained in the Act and publicly available information on the Branch website and forms, the Act is law and where discrepancies between what is stated in the Act and what is stated on the Branch website and forms arise, the Act prevails and must be followed. As a result, I find that section 51(2)(b) of the Act still applies, regardless of the Landlords' alleged lack of knowledge regarding it. Having made this finding, I will now turn to the matter of whether the Landlords may be exempted under section 51(3) of the Act from owing the compensations set out under section 51(2).

Although the Landlords stated that they issued the Two Month Notice in good faith, and that extenuating circumstances prevented them from occupying the rental unit for the required 6-month period, I do not find this to be the case. It is clear to me from the emails between the parties, that the Landlords originally sought a mutual agreement to end the tenancy so that the rental unit could be sold to finance a new-build home for which they were already under contract. The contract of purchase and sale documents submitted, portions of which were intentionally redacted by the Landlords such as the purchase price, deposit amounts, and outstanding balance owed, indicate that the balance owed after the initial deposit and a secondary deposit, was due upon completion, the anticipated date for which was originally July 1, 2022 – September 30, 2022. Although the anticipated completion date was later pushed to January 2023, this was not until November 9, 2022, well after service of the Two Month Notice and the subsequent sale of the rental unit by the Landlords in May of 2022. When the Tenants refused to enter into a mutual agreement to end the tenancy, and requested that the

Landlords instead follow the Act with regards to selling a home that is subject to a tenancy agreement under the Act, the Landlords responded the following day that they now wished to occupy the rental unit themselves. The Two Month Notice was then served.

The Landlords stated that although they originally planned to sell the rental unit first and their primary residence in another community later in order to finance the amount due for their new-build home upon completion, they decided to sell their primary residence first and occupy the rental unit themselves due to their concerns about the possible affects of potential changing market conditions on their ability to sell their primary residence. However, the Landlords sold both their primary residence and the rental unit within only a few months of each other, and no explanation was given regarding why the potential of changing market conditions would have had a greater impact on their ability to sell their primary residence in another community. As a result, I find it more likely than not that the Two Month Notice was not served in good faith, and that it was served because they needed to sell both residences to finance their new-build home, it is easier to sell a home that is not subject to a tenancy agreement under the Act, and the Tenants refused to sign a mutual agreement to end their tenancy, not because the Landlords truly intended to occupy the rental unit themselves.

The Landlords also made it clear in their submissions and testimony that they did not understand until after the Two Month Notice had been served, the Tenants had vacated the rental unit in compliance with it, and the rental unit had been sold without having first been occupied by the Landlords for at least 6 months, that they would be required to pay compensation under section 51(2) of the Act if they did not occupy the rental unit for at least 6 months without having been prevented from doing so due to extenuating circumstances. This further supports my finding that the Two Month Notice was not served in good faith and that the Landlords never intended to occupy the rental unit for at least 6 months. Although section 51(2) of the Act does not require that the relevant Two Month Notice be served in good faith, I find that the lack of good faith by the Landlords in relation to the issuance of the Two Month Notice further supports my finding below that extenuating circumstances are not the reason for their lack of occupancy of the rental unit for the required amount of time.

The Landlords argued that although they moved into the rental unit within a reasonable period after the affective date of the Two Month Notice, they were prevented from occupying the rental unit for at least 6 months duration thereafter due to an unexpected lack of childcare, prompting them to sell the rental unit and move. Although the

Landlords argued this constitutes an extenuating circumstance under section 51(3) of the Act, I disagree. First, as I have already set out above, I am not satisfied that the Landlords ever intended to occupy the rental unit for at least 6 months duration. In fact, they admitted that they were not even aware of the requirement to do so as they thought they only needed to move in to be exempt from owing compensation to the Tenants under section 51(2) of the Act. Second, the Landlords acknowledged that they were always planning to move to another community to occupy their new-build home, which at the time the Two Month Notice was served, was anticipated to be completed as early as July 1, 2022, which is less than 6 months after the affective date of the Two Month Notice.

Further to this, although they argued that their lack of childcare was the result of an unanticipated injury by their childcare provider, the mother of one of the Landlords, no persuasive evidence was submitted to support the Landlord's testimony that the injured family member was planning to provide childcare in the first place. Although an email was submitted by the Landlords between FL and a potential childcare provider wherein FL stated that they were withdrawing their application because a family member would be providing childcare, the name of the family member was not mentioned. As a result, I am not satisfied that the family member mentioned in the email was the same family member who sustained an injury. Further to this, as the email was authored by FL, I find that it is equivalent to testimony by FL, and is therefore not corroboratory evidence but rather a re-statement of the same testimony already provided by the Landlords at the hearing. Finally, no direct evidence was submitted by the injured family member stating that prior to their injury, they were willing and able to provide childcare in or close to the community in which the rental unit is located.

As set out above, I am satisfied that the Landlords failed to occupy the rental unit for at least 6 months duration beginning within a reasonable period after the affective date of the Two Month Notice. I am also satisfied that the Landlords were not prevented from doing so due to extenuating circumstances. As a result, I therefore grant the Tenants' Application seeking $27,086.40, which represents 12 times the amount of rent payable at the time the tenancy ended, $2,257.20, pursuant to section 51(2) of the Act. As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Landlords' Application

Fireplace Repairs

Although the Landlords stated that the Tenants caused $522.38 worth of damage to the fireplace and the rental unit due to misuse of the fireplace as a main heat source, I am not satisfied by the Landlords that this is the case. First, although the Landlords argued that $522.38 in fireplace repairs were required because the Tenants misused the fireplace, no evidence was submitted by the Landlords demonstrating why the repairs completed were required. The only evidence submitted by the Landlords regarding the fireplace repair was an invoice, which states only that the pilot assembly was replaced, not why it was malfunctioning or that the Tenants are responsible for damaging it. The Tenants also argued that the Landlords failed to properly service and maintain the fireplace during the tenancy, and as a result, the required repairs are the result of either normal wear and tear, or neglect by the Landlords, or both. In support of this position the Tenants submitted documentation showing the regular maintenance schedule required for the fireplace, as well as communications from other occupants of the building regarding similar repairs required due to wear and tear or lack of required annual maintenance. Finally, the Landlords acknowledged in an email on April 4, 2022, that they do not know if the fireplace was malfunctioning due to misuse by the Tenants or normal wear and tear.

As a result of the above, I find that the Landlords have failed to satisfy me on a balance of probabilities that the fireplace repairs were due to a breach of the Act by the Tenants, rather than normal wear and tear of parts, a manufacturer defect, or a lack of proper annual maintenance by the Landlords. I therefore dismiss this portion of their claim without leave to reapply.

Paint and Wall Repairs

I likewise dismiss the Landlords' claim for recovery of $4,400.00 in painting and repair costs required according to the Landlords due to the Tenants' alleged misuse of the fireplace. Although the Landlords argued that the Tenants caused the fireplace to heat well beyond its capacity, for long periods of time, causing various types of damage to the rental unit such as paint chips and wall cracks, no evidence to support that this occurred was submitted by the Landlords. I therefore find this argument purely speculative. Although the Tenants acknowledged moving a heat sensor for the fireplace several feet, the Landlords did not submit any evidence to satisfy me that doing so

actually caused the fireplace to overheat. Further to this, although the Landlords hypothesized that various cracks and paint chips were caused by the overheating of the fireplace, no evidence to substantiate this hypothesis was submitted, and the Tenants argued that the paint chips were normal wear and tear, and the cracks were due to settling. In support of their position the Tenants submitted copies of communications with other occupants of the building who have experienced similar defects and cracking.

Further to the above, Residential Tenancy Policy Guideline (Policy Guideline) #40 states that the useful life of interior paint is 4 years. As a result, and as the tenancy was over 4 years in length and the Landlords occupied the rental unit for several years before the tenancy began, I find it more likely than not that paint is chipping due to age as it is past it's useful life rather than due to the actions of the Tenants. Although the Landlords stated that the Tenants also painted a portion of the rental unit without consent, they acknowledged that they are not seeking compensation for this as they did not advise the Tenants not to paint. I therefore, find that the Landlords have failed to satisfy me on a balance of probabilities that the Tenants misused the fireplace resulting in damage to the rental unit, or that the Tenants otherwise damaged the paint, and I find it more likely than not that the paint and wall cracking is due to age and settling of the building rather than the actions of the Tenants and I dismiss this portion of their claim without leave to reapply.

Cleaning

Although the Tenants argued that they left the rental unit reasonably clean at the end of the tenancy, I disagree. Photographs and a cleaning invoice submitted by the Landlords satisfies me that although the Tenants made good efforts to clean, some things were not left reasonably clean at the end of the tenancy as required by section 37(2)(a) of the Act, such as the microwave door, the top of the dishwasher door, some cabinet doors, and grout/caulking in the shower. As a result, I grant the Landlords the $330.75 sought for cleaning costs, as set out in the invoice.

Shower Leak and Water Damage

The Landlords argued that the Tenants are responsible for causing water damage to a garage sealing and cabinetry under the sink. While the Tenants acknowledge that this damage occurred, they deny responsibility stating that the grout/caulking around the shower base was failing and that a braided water line under the sink leaked.

Although the useful life expectancy for showers is not explicitly set out in Policy Guideline #40, the life expectancy of tubs, toilets, and sinks is. As a shower is comparable in use to a tub, I find it reasonable to conclude that the life expectancy of a shower is similar, and therefore find that the shower of the rental unit has a useful life of 20 years. However, I do not find that this useful life applies to the sealants used for its installation, such as caulking or grout, which break down faster over time. Policy Guideline #40 lists the useful life of waterproofing sealers under moisture protection as 5 years. As a result, I find that the grout and/or caulking in the shower had a useful life of only 5 years. Although the parties disputed whether the Tenants, normal wear and tear, or improper installation of caulking/grout were to blame for a shower leak, I am satisfied given the age of the rental unit and the length of the tenancy, that the sealant between the tile on the wall and the shower pan was past its useful life. As a result, I am satisfied that this is the likely cause of the leak, or at least the most significant cause for the shower leak, and that any lack of cleanliness by the Tenants with regards to the shower had negligible impact on its useful life, if any. As a result, I do not find the Tenants responsible for any damage associated with leaking from the shower. Similarly, I do not find the Tenants responsible for the damage caused under the sink by a leaky hose as I am not satisfied that the Tenants damaged the hose or otherwise caused it to leak.

Carpets

Although the Landlords and their realtor argued that the carpets of the rental unit were damaged beyond repair by the Tenants and their pet(s), and therefore had to be replaced, I am not satisfied this is the case. While I acknowledge that there is some staining to the carpets as shown in several photographs, in an email dated November 23, 2021, the Landlords stated that the Tenants did not need to have the carpets cleaned as they would be replaced. As a result, I am satisfied that the carpets were replaced by the Landlords not because they were left dirty or damaged by the Tenants as argued, but because before even seeing the carpets at the end of the tenancy, the Landlords had decided that they were going to be replaced, either for their own comfort during occupancy, resale value, or both. As a result, I do not find that the Tenants are responsible for any of the $5,674.68 sought by the Landlords for carpet replacement and I dismiss this portion of their claim without leave to reapply.

As the Landlords were successful in at least a portion of their claims, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

As both parties are owed compensation, I have offset the amounts owed by one to the other, and pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of **$26,755.65** as follows:

Monetary Issue	**Granted Amount**
Compensation to the Tenants under section 51(2) of the Act	$27,086.40
Compensation to the Tenants under section 72(1) of the Act	$100.00
Set-off against compensation to the Landlords under sections 7 and 37(2)(a) of the Act	-$330.75
Set off against compensation to the Landlords under section 72(1) of the Act	-$100.00
Total Amount under section 67 of the Act	**$26,755.65**

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$26,755.65** and I order the Landlords to pay this amount to the Tenants. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to issue them, are affected by the fact that that they were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: July 5, 2023

Residential Tenancy Branch