Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL, LRSD
MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords (Landlords' Application) under the *Residential Tenancy Act* (the Act) on October 5, 2023, seeking:

- compensation for monetary loss or other money owed;
- retention of the security deposit; and
- recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenants (Tenants' Application) under the Act on October 6, 2023, seeking:

- compensation for monetary loss or other money owed;
- the return of their security deposit; and
- recovery of the filing fee.

The parties acknowledged service of each other's Notice of Dispute Resolution Proceeding (Proceeding Package) and documentary evidence and raised no concerns regarding service. I therefore found the parties duly served with the Proceeding Packages and documentary evidence in accordance with the Act. The hearing of both Applications therefore proceeded as scheduled.

Preliminary Matters

The parties disagreed about which of the Applicants/Respondents were tenants under the tenancy agreement. The persons present on behalf of the Tenants' Application stated that they were all tenants under the tenancy agreement. The Landlords disagreed, stating that only D.D. and J.O. were tenants under the tenancy agreement.

I have considered the positions of the parties and reviewed the tenancy agreement before me. I am satisfied that only D.D. and J.O. were tenants under the tenancy agreement as only they were named as tenants in the agreement. No addendum to the

tenancy agreement was submitted naming the other three applicants/respondents as tenants under the tenancy agreement, and page six of the tenancy agreement states that there are no addendums to the agreement.

I am satisfied that the other three applicants/respondents, S.M., C.E., S.L., and D.R., were therefore D.D. and J.O.'s roommates, which makes them occupants of the rental unit, rather than tenants under the tenancy agreement. As occupants do not have rights or obligations under the Act, I amended the Applications accordingly to remove these named persons as parties to the dispute.

Issue(s) to be Decided

Are the Landlords entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to retain the security deposit? If not, are the Tenants entitled to its return?

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

Background and Evidence

The fixed term tenancy agreement in the documentary evidence before me states that the tenancy commenced on July 1, 2023, and was set to end on June 31, 2024. Rent was set at $7,500.00 and due on the first day of each month. The tenancy agreement lists only D.D. and J.O. as tenants under the agreement, and states that a $3,750.00 security deposit was required. The tenancy agreement lists only the street address, no unit number. The parties agreed that the rental unit was a free-standing single-family home consisting of at least the following:

- six bedrooms;
- two and a half bathrooms;
- a kitchen; and
- a combined living and dining area.

Despite the above, the parties agreed that the basement of the home was not rented to the Tenants. They also disagreed about whether the attached sunroom was rented to the Tenants. The Tenants stated that it was, and that they were clearly showed this area when viewing the home prior to entering into the tenancy agreement. The

Landlords disagreed, stating they never guaranteed access to the sunroom, which was an addition to the original home.

Although the parties agreed that the rental unit was rented furnished, they disagreed about what was to be included in the furnishings, and what was supposed to be removed from the home by the Landlords before they moved out of the rental unit and into the laneway home also located on the property.

The Tenants stated that in addition to the agreed upon furniture, the Landlords left food behind in the fridge, freezer, and cupboards, as well as many other personal items, such as medications in the medicine cabinet, and miscellaneous junk and other belongings. The Tenants stated that not only the sunroom, but also several closets, shelves, and cabinets were full of the Landlords' belongings, which were supposed to be removed by the Landlords prior to the start of the tenancy. The Tenants stated that the sunroom was so full of the Landlords' personal belongings, that it could not be used. As a result, the Tenants sought $1,250.00 per month in July, August, and September of 2023, for its loss of use. The Tenants stated that as the sunroom is the approximate size of two bedrooms, and that each of them, plus the other occupant D.R. were paying $1,250.00 per month, this seemed like a reasonable claim amount.

The Landlords disagreed with the Tenants' characterization of what was left behind, and stated that it was left furnished as agreed upon. While they acknowledged that they left some food behind, they stated that they offered this food to the Tenants for their use, and that when they told them they did not want it, they came to retrieve it. The Landlords argued that as the sunroom was not rented to the Tenants, its use was not guaranteed, and therefore they should not be entitled to any loss of use. They also stated that the Tenants used the sunroom as a dumping ground for their valuable possessions left behind, and that it was not useable because of this, which is not their fault.

The parties agreed that the tenancy ended because the Tenants gave notice, and that all but one occupant of the rental unit, D.R., vacated on or about September 9, 2023. They agreed that D.R. stayed until the end of September, and that full rent was paid for this month. They also agreed that the Landlords received a forwarding address in writing, via text, on September 15, 2023. The parties disagreed about whether a move-in condition inspection was completed. However, they all agreed that a move-in condition inspection report was not completed, and that neither a move-out condition inspection or report were completed.

The Tenants stated that they were forced to give notice as the Landlords breached the terms of their agreement by failing to remove their personal possessions from the rental unit, despite having six weeks to do so between the time the tenancy agreement was signed and the move-in date. They also sated that they gave the Landlords many additional opportunities to do so after they moved, and the Landlords failed to do so. As a result, the Tenants sought the return of all rent paid for September of 2023.

The Landlords disagreed that September 2023 rent should be returned to the Tenants, as they broke their fixed term tenancy agreement early, upon only two days written notice. Regardless, they stated that the rental unit could not be re-rented for September of 2023, as D.R. remained in the rental unit until September 30, 2023. The Landlords stated that they also lost $4,642.00 in rental income for the month of October 2023, as they were unsuccessful in renting out the home under one tenancy agreement, and were only able to rent out three individual rooms. The Landlords stated that as they only received partial rent from the three new occupants for October of 2023, they are owed the balance of the $7,500.00 in rent payable under the Tenants' tenancy agreement, which is $4,642.00.

Although the Landlords sought recovery of $865.80 in utilities in their Application, they provided no testimony at the hearing regarding outstanding utilities. Neither did the Tenants or occupants. No one pointed to any documentary evidence during the hearing regarding outstanding utilities.

The Landlords sought retention of the security deposit against any amounts owed to them by the Tenants. The Tenants sought the return of their security deposit, plus any compensation owed to them by the Landlords. Both the Landlords and Tenants sought recovery of their respective filing fees.

Analysis

Relevant Sections of the Act

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying party must:

- compensate the other party for any damage or loss that results; and
- do whatever is reasonable to minimize the damage or loss.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in

the tenancy agreement as the end date for the tenancy, and is the day before the date 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) of the Act states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time 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.

Relevant Residential Tenancy Policy Guidelines (Guidelines)

Guideline #3 states under section C that where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the unpaid rent up to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for.

Guideline #5 states that 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.

Guideline #8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. It also states that to end a tenancy agreement for breach of a material term, the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, which must be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Guideline #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not

occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Guideline #30 states that a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Were the Landlords entitled to retain the security deposit pending the outcome of their Application? If not, are the Tenants entitled to its return or double its amount?

I am satisfied that the Tenants paid a $3,750.00 security deposit on or about May 18, 2023, as set out in the tenancy agreement. As the parties agreed at the hearing that the Landlords have not returned any portion of the deposit, and that no portion of it has previously been used for a lawful purpose as allowable under the Act, I find that they are currently holding $3,810.34 in trust. This includes the original $3,750.00 paid, plus $60.34 in interest owed.

I am satisfied that the tenancy ended on September 30, 2023, when the last occupant authorized by the Tenants to occupy the rental unit, D.R., vacated. I am also satisfied that the Landlords received the Tenants forwarding address in writing via text message on September 15, 2023. As a text message is a common form of written communication, I find that this text message constitutes the provision of a forwarding address in writing for the purpose of section 38(1) of the Act.

As the Landlords acknowledged failing to complete a condition inspection report at both the start and the end of the tenancy, as required by sections 23(4) and 35(3) of the Act, I therefore find that they extinguished their right to claim against the deposit, but only for damage to the unit, pursuant to sections 24(2)(c) and 36(2)(c) of the Act. As the Landlords have not filed a claim for damage to the unit, I find that they therefore

retained their right to claim against it for other matters, provided they complied with section 38(1) of the Act in doing so.

Section 38(1) of the Act states that a landlord must, within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the deposits.

As the tenancy ended on September 30, 2023, and the Landlords received the Tenants' forwarding address in writing on September 15, 2023, I find that the Landlords had until October 15, 2023, to either file a claim against the deposit or return it to the Tenants. As the Landlord's Application was filed on October 5, 2023, I find that it was filed on time, and that the Landlords were therefore entitled to retain the security deposit, pending the outcome of their Application.

Are the Tenants entitled to the return of September 2023 rent?

Although the Tenants sought the return of all rent paid for September of 2023, I dismiss this claim without leave to reapply for the following reasons. First, I am satisfied that the occupant D.R. continued to reside in the rental unit until the end of September 2023. This means that not only did the Tenants' roommate get use of the rental unit during that time, but the rental unit could not be re-rented to new tenants.

Second, the Tenants signed a fixed term tenancy agreement with an end date of June 31, 2024. This means that they were obligated to pay $7,500.00 in rent each month for that entire period unless they were entitled to end the tenancy early under the Act. While section 45(3) of the Act allows tenants to end a fixed-term tenancy agreement early if their landlord(s) breach a material term of the tenancy agreement, not all terms of a tenancy agreement are material. Further to this, there are specific steps required to be followed by parties wishing to end a tenancy for breach of a material term, which must be followed in advance of issuing a notice to end the tenancy for this reason.

Regardless of whether the Landlords were required to remove possessions from the rental unit as a material term of the tenancy agreement, I am not satisfied that the Tenants followed the required steps to properly end their tenancy for breach of a material term under section 45(3) of the Act.

As set out in Guideline #8, to end a tenancy agreement for breach of a material term, the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, which must be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Although I am satisfied that the Landlords were advised by the Tenants verbally and in writing that their failure to remove their personal possessions was an issue, I am not satisfied by the documentary evidence before me and the testimony of the parties that the Landlords were advised in writing that failing to do so was a breach of a material term of the tenancy agreement, rather than an ordinary term. I am also not satisfied that the Tenants properly advised the Landlords that failure to resolve the breach would result in the end of the tenancy by a specified deadline.

Although the Tenants stated at the hearing that they sent the Landlords a letter on August 22, 2023, regarding the issue, a copy of this letter was not before me for consideration. In any event, the Tenants stated that in this letter they gave the Landlord options, including offering to help them remove their personal belongings, and stated that if the issue cannot be resolved, they will have to discuss further options by the next time rent is due. Even if I were to accept that this letter was written exactly as stated by the Tenants, and received by the Landlords, it would not have constituted a proper breach letter for the purpose of ending the tenancy under section 45(3) of the Act as:

- it does not explicitly state that they believe the Landlords to be in breach of a **material** term of the tenancy agreement; and
- it does not state that the tenancy will be ended if the breach of the material term is not resolved by a specified deadline, only that “further options” will need to be discussed.

Similarly, I find that the letter dated September 7, 2023, is not a breach letter meeting the criteria set out in Guideline #8, but rather a notice to end tenancy. As I am not satisfied by the Tenants that a proper breach letter meeting the criteria set out in Guideline #8 was issued in writing to the Landlords before the Tenants gave their Landlords written notice to end their tenancy, I therefore find that they were not entitled to end their tenancy under section 45(3) of the Act by way of their September 7, 2023, notice to end tenancy.

Tenants subject to a fixed term tenancy agreement may not end their tenancy earlier than the end date for their fixed term as set out under section 45(2) of the Act unless sections 45.1 or 45(3) of the Act applies. As there is no evidence before me that the tenancy was ended under section 45.1 of the Act for family violence or long-term care, and I am satisfied that section 45(3) of the Act does not apply, I therefore find that the Tenants breached both their fixed term tenancy agreement and section 45(2) of the Act, when they issued their notice to end tenancy on September 7, 2023, and they and the other occupants of the property subsequently vacated the rental unit between September 9, 2023 – September 30, 2023.

As the Tenants were not entitled under the Act to end their tenancy in September of 2023, I therefore find that they are not entitled to the return of the $7,500.00 in rent paid for September 2023. The Landlords may therefore keep the rent already paid for September of 2023.

Are the Landlords entitled to recovery of lost October 2023 rent?

As set out above, I am satisfied that the Tenants breached both the Act and their tenancy agreement by ending their tenancy in September of 2023. I am also satisfied that the Landlord was prevented from re-renting the unit in any portion of September 2023, as the Tenants and all but one occupant, D.R., vacated the rental unit only two days after serving their notice to end tenancy. D.R. remained in possession of the rental unit until September 30, 2023.

As set out in Guidelines #3 and #16, a tenant that vacates or abandons their rental unit before the end date for the tenancy agreement, must compensate the landlord for the damage or loss that results. This can include the unpaid rent up to the date the tenancy agreement ended, and the rent the landlord would have been entitled to if the tenancy had not been improperly ended by the tenants, less any amount of rent received due to re-rental.

As rent was paid for September of 2023, and I have dismissed the Tenants' claim for return of this rent without leave to reapply, there is no outstanding rent owed prior to the end date of the tenancy. However, I am satisfied that the Landlord suffered a loss of rent the following month, due to the Tenants' breach of the Act and their tenancy agreement. As there is no evidence to the contrary, I accept the Landlords' testimony that they attempted to re-rent the entire unit without success for October of 2023. I also accept that they were ultimately only able to rent out three rooms in October, not all of which were rented out for the entire month, and therefore lost out on $4,642.00 in rent

that they would have obtained for that same month, had the Tenants not improperly ended their fixed term tenancy early.

I find that the Landlords appropriately mitigated their loss of rent by first attempting to rent out the entire home, and then renting out individual rooms when they could not find a tenant to rent the entire house at a comparable rate to what the Tenants were required to pay under their tenancy agreement. I therefore grant the Landlords recovery of the $4,642.00 sought for lost October 2023 rent under section 7 of the Act.

Pursuant to section 72(2)(b) of the Act, the Landlords are permitted to withhold the $3,810.34 security deposit and interest currently held in trust, towards this amount. Pursuant to section 67 of the Act, I grant the Landlords recovery of the remaining balance owed of $831.66.

Are the Landlords entitled to recovery of unpaid utilities?

Although the Landlords sought recovery of $865.80 in unpaid utilities as part of their Application, and included this amount as part of the total amount claimed for compensation for monetary loss or other money owed, they presented no evidence or testimony regarding outstanding utilities at the hearing. No utility bills were submitted to corroborate that the amount claimed is accurate and the only evidence submitted by the Landlords regarding utilities is a few texts regarding utilities. It is not at all clear to me whether the amounts discussed in the texts form part of the Landlords' current claim for recovery of $865.80 in unpaid utilities.

As a result of the above, I find that the Landlords have failed to satisfy me on a balance of probabilities that outstanding utilities are even owed by the Tenants, let alone that the amount claimed as outstanding is accurate. I therefore dismiss their claim for recovery of outstanding utilities without leave to reapply.

Are the Tenants entitled to compensation for loss of use of the sunroom?

For the following reasons, I find that the sunroom was more likely than not rented to the Tenants under their tenancy agreement. There was no disagreement between the parties that the rental unit is a free-standing single-family home and the tenancy agreement lists only the street address for the single-family home. No unit number is given. Further to this, it is clear from the photographs submitted from both the Landlords and the Tenants, that the sunroom is permanently physically attached to the home and is accessible from both inside of the rental unit, as well as the back yard.

While the Landlords argued that the sunroom was not part of the home at the time it was built, as it is an addition, I do not see the relevance of this information. The Tenants did not rent the home at the time it was built, and the sunroom was already permanently attached to the home at the time the rental unit was viewed, the time the tenancy agreement was entered into, and at all times during the tenancy. It therefore makes sense based on common sense and ordinary human experience, that perspective tenants viewing the home would reasonably conclude that the sunroom was included as part of the home being rented, unless otherwise explicitly set out.

As the parties disagreed about whether there was a verbal agreement that the sunroom was not being rented to the Tenants as part of the tenancy agreement, I have turned to the documentary evidence before me to resolve this conflict. Although there are several available spaces under section 3 of the tenancy agreement for the purpose of setting out additional information about the rental unit and what is and is not included in the cost of rent, these sections were left blank. Had use of the sunroom not been included in rent, it makes sense that this would have been set out here, or in an addendum to the tenancy agreement. There were no addendums to the tenancy agreement either. Further to this, advertisements for the rental unit were also not before me. While the absence of this evidence is not determinative, it would have been helpful in determining whether the sunroom was originally advertised as being part of the rental unit, and its absence is therefore curious to me.

In the absence of compelling documentary evidence from the Landlords that the sunroom was not rented to the Tenants under their tenancy agreement, and given the nature and layout of the home, I am satisfied on a balance of probabilities that the sunroom formed part of the rental unit rented to the Tenants under their tenancy agreement.

Having viewed the photographic evidence submitted by the Tenants, I am satisfied that both the sunroom and various cabinets, drawers, cupboards, shelves, and closets contained a significant amount of the Landlords personal belongings at the time the agreement commenced, and throughout the tenancy. Although the Landlords argued that these items were part of the “furnishings” provided for the furnished rental unit, I disagree. The volume and nature of the items, such as clothing, paperwork, junk, medications, used personal items and toiletries, and food, is such that I am satisfied that no reasonable tenant or prospective tenant would have foreseen that such items would be included as part of a furnished rental unit.

As the Landlords were living in the rental unit immediately prior to the start of the tenancy, and moved to a small laneway house located on the same property, I find it more likely than not that the Landlords simply left these items behind when they moved out as alleged by the Tenants. Most likely due to a lack of space in the Laneway house. While I accept that the Landlords came to take away the food items left behind at the Tenants' request, I am satisfied that a large volume of personal belongings were still left behind, such that they filled most of the sunroom, rendering it unusable.

As I am satisfied that the Tenants rented the sunroom as part of their tenancy agreement, I therefore find that their tenancy was devalued as a result. Although the Tenants sought compensation in the amount of $1,250.00 per month for July, August, and September of 2023, I find this amount unreasonable. The Tenants rented a large home consisting of six bedrooms, two and a half bathrooms, a kitchen, a combined living and dining area, and the sunroom. Most of the home remained useable and accessible to the Tenants throughout their tenancy, and as a bonus living space rather than an essential one, such as a bedroom, kitchen, or bathroom, I do not find that its lack of availability decreased the overall value of the tenancy to such a high degree.

Nevertheless, I am satisfied that the Tenants suffered a loss due to its lack of availability. I determine $831.66 to be a reasonable value for this loss, based on its size in comparison to the rental unit as a whole, its level of importance in comparison to other areas of the rental unit, such as the kitchen, bedrooms, and bathrooms, and the fact that neither of the Tenants and only one occupant of the rental unit reside there for most of September 2023. Pursuant to sections 7 and 67 of the Act, I therefore grant the Tenants recovery of this amount.

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

As there were mixed results for both parties, I decline to grant either party recovery of their filing fee.

Conclusion

Although the parties were each partially successful in their monetary claims, the amounts granted to each party were equivalent. I therefore find that no compensation is owed to either party after the amounts awarded are set off against each other.

Despite the above, the Landlords are entitled to retain the $3,810.34 security deposit and interest currently held in trust, pursuant to section 72(2)(b) of the Act.

I dismiss both parties Applications for recovery of their respective filing fees without leave to reapply.

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

Dated: February 22, 2024

Residential Tenancy Branch