



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord's application: MNDC-S, LRSD, FF
Tenant's application: MNDC, MNSD, FF

Introduction

This hearing was convened as the result of cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Landlord applied on January 14, 2024, against both Tenants, for compensation for a monetary loss or other money owed and recovery of the filing fee.

The Tenants applied on February 22, 2024 for compensation for a monetary loss or other money owed and recovery of the filing fee.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord said that they could not open the Tenant's video evidence, but that they did receive the pictures and emails.

I note that I was unable to open most of the Tenant's video evidence, having viewed only the Tenant's video of the lower level of the home, which was not their unit, and a picture of a nail coming through the floor.

As the Tenant did not confirm that the digital evidence was accessible, I exclude all video evidence from consideration.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Are the Tenants entitled to monetary compensation from the Landlord?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The written tenancy agreement shows this tenancy began on February 1, 2023, for a monthly rent of \$3500, due on the first day of the month, and a security deposit of \$1750 paid by the Tenant. The security deposit has been returned to the Tenant.

Landlord's application

The Landlord's monetary claim is \$1750. The Landlord claims that they are entitled to compensation equal to a half month's rent as the Tenant interfered with showing the rental unit to prospective tenants after receiving the Tenant's notice to vacate.

The Landlord submitted that on May 30, 2023, the Tenants requested early termination of their fixed-term lease and they agreed with the Tenant's request to move out by July 16, 2023. They requested two showings a week, but the Tenant agreed to only one showing. The Landlord submitted that the Tenant would not cooperate even with the one showing, despite the notices to enter being given to the Tenant. This resulted in not being able to show the rental unit until the Tenants vacated, which caused a loss of one-half month's rent of \$1750.

The Tenant testified that the Landlord's agent sent them an email on June 9, 2023, that they had new tenants moving in on July 16, 2023, at 1:00 pm, so they believed the

rental unit did not require showings. Later on, they tried to work with the Landlord for a showing at a convenient time, but those attempts were unsuccessful.

Tenant's application

The Tenant's monetary claim is \$21,750, comprised of full rent reimbursement for the length of the tenancy \$19,250 (5 ½ months @ \$3500), \$1500 move-in fee, \$900 move-out fee, and the filing fee of \$100.

To describe their claim, the Tenant wrote the following:

*Claim: I am seeking reimbursement for 5 1/2 months' worth of rent, totaling \$19,250 (\$3,500 per month). Additional Expenses: Moving-in fees (\$1,500), moving-out fees (\$900), and filing expenses (\$100). Prior My initial claim was dismissed due to a technical error. The judge advised me to file a new claim under monetary los. Landlord's Hearing: My landlord has a dispute hearing scheduled for Tuesday, May 7, 2024, at 1:30 PM (File Number: *****05). I kindly request the consolidation of both hearing*

The Tenant submitted that there was construction taking place in the lower unit during their tenancy in the upper unit "without proper notice or city permits". Further on the morning they moved in, the Landlord's agent informed them that renovations in the lower unit were starting that day. The Tenant submitted they felt like they had no choice but to accept the situation as they were new tenants who had two young children. The Tenant asserted the construction was disruptive and violated their rights by performing construction without a schedule, including Sundays.

The Tenant submitted that they approached the agent about the disruptions and were promised that the workers would abide by by-law construction requirements.

Additionally, the Tenant submitted that the workers used gas-powered machines, creating smoke and concrete dust. The vacated their rental unit for one night for their family's safety to get away from the concrete dust. Other times, the workers' cigarette smoke entered the rental unit.

The Tenant submitted that there was not a functional fire system and there were safety hazards from the construction, such as a large nail coming through their living room floor.

Other issues during the construction claimed by the Tenant included:

- Power and water outages
- Workers' use of the Tenant's bathroom or urinating in the back yard
- Lack of ability to use of the backyard for various reasons
- No air conditioning system as advertised

In response to my questions, the Tenant agreed that they had full and unlimited use of their rental unit and services the entire length of the tenancy and they were not required to vacate, though they chose to vacate for one night. The Tenant submitted they had full use of the three bedrooms, had guests over sometimes, cooked, showered and had full use of the two bathrooms.

In response to the Tenant's claim, the Landlord submitted the Tenants failed to provide proof that they suffered a loss, that their claims were exaggerated and misleading, and that their evidence was disorganized, preventing a focused response. The Landlord submitted that construction noise was minimal during the entire tenancy and that the working hours were to by-law requirements, with the exception of two times, with the Tenant's permission and another time when the contractor waited for an after hour delivery.

They informed the Tenant of the anticipated renovation before they signed the tenancy agreement, the workers were instructed to make minimal noise during renovations, and the electrical and plumbing work was done with the proper permits.

The Landlord submitted that the Tenant's claim as to backyard loss was misleading, as they had the full use of their portion of the back yard, as shown in their photograph. The Landlord submitted that the many disorganized emails from the Tenants were just landlord-tenant communications.

The Landlord questioned why the Tenants waited until seven months after the tenancy ended before filing for dispute resolution, and not send their notice to end the tenancy until the summer, when all construction, with the exception of painting, had been completed by the end of May 2023.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Although the written tenancy agreement ultimately was not an issue for the claims of either party, I find the Tenant's tenancy was a month-to-month tenancy. The tenancy agreement on the standard RTB form was marked as a month-to-month, and although the addendum indicated a fixed-term, I find the addendum contradicted the tenancy agreement portion and cannot be enforced as a result.

Landlord's application

The Landlord claims a loss of half a month's rent due to the Tenant failing to allow showings.

If the parties cannot agree to times and dates for showings, the Landlord may serve the Tenant a notice of entry that meets the requirements of the Act.

In this case, although the parties discussed showing times, I find the evidence shows that the Tenant ultimately tried to negotiate a new time. I do not find the Tenant prevented the Landlord from entering, just that they wanted a different time. This was done through emails.

For this reason, the Landlord's recourse was to post a notice of entry for the showing and enter the premises, as the Tenant is allowed to be present, but it is not required. The Tenant's permission is not necessary upon a proper notice to enter.

In this case, the Landlord's evidence shows they posted a notice of entry on July 5, 2023, for a showing on July 7, 2023. I find this notice was insufficient. The Landlord is required to provide notice at least 24 hours in advance of the entry, and in considering that the notice was attached to the door, the Tenant was not deemed to have received the Notice until 3 days after it was attached. What this means is that if the Landlord wanted to enter on July 7, 2023, the notice of entry would had to have been no later

than July 4, 2023. The other notice of entry was by email on June 30, 2023, which is not allowed unless the Tenant had given written permission to be served documents by email. As there was no evidence this was the case, I find this notice of entry was invalid.

Having said that, I also find the Landlord's email of June 9, 2023, to the Tenant confusing, as the Landlord's agent told the Tenants that new Tenants would be arriving after 1:00 pm on July 16, 2023. I find it reasonable to conclude that the Tenants were reasonable in their assumption that the Landlord has secured a new Tenant by that time, June 9, 2023.

For the reasons above, I find the Landlord submitted insufficient evidence that they did whatever was reasonable to minimize their loss, as they could have provided the Tenant with the required written notice of entry, in the proper time frame, and entered the rental unit without permission from the Tenant to show the rental unit to potential new tenants.

For this reason, I find the Landlord submitted insufficient evidence to support their application, and I dismiss the Landlord's application in full, without leave to reapply.

Tenant's application

In their application, I find the Tenant has presented insufficient evidence or explanation as to why their claim is for a full rent reimbursement for a rental unit of which they had full use for the entire time. The Tenant confirmed that they stayed and had full use of their rental unit for the entire length of the tenancy, with the exception of one night, at their choosing.

While the Tenant presented their issues with the renovations during the tenancy, the Landlord provided evidence of a reasonable response. If the Tenant was not satisfied with the Landlord's response during the tenancy, they ought to have filed an application for dispute resolution with the RTB at that time, not wait until they vacated.

For this reason, I find the Tenant submitted insufficient evidence that they did whatever was reasonable to minimize a claimed loss. However, in this case, I accept the Landlord's argument that the Tenant has not provided sufficient evidence of a loss, as they paid rent for a rental unit of which they had full use.

I find the Tenant has not provided a basis for the claim, as they did not claim or allege a breach of the Act or tenancy agreement by the Landlord supported or filed sufficient evidence as to why they should receive all their rent returned.

For the above reasons, I find the Tenant submitted insufficient evidence that the Landlord breached the Act, that they suffered a loss as a result, or that they did whatever was reasonable to minimize any loss.

I find the Tenant's claim for full rent reimbursement to be unreasonable.

For all these reasons, I dismiss the Tenant's claim for \$19,250, without leave to reapply.

As to the Tenant's claim for moving in and moving out expenses, I find these are costs incurred as a result of the Tenant's choices and the Act does not allow compensation for choices made by a Tenant in moving in or moving out. The Tenant was not required to move in or out of the rental unit and I have previously found the Tenant submitted insufficient evidence of a breach of the Act by the Landlord.

For this reason, I dismiss the Tenant's claims for moving expenses, without leave to reapply.

As I have dismissed the Tenant's entire monetary claim, I dismiss their application in full, without leave to reapply.

Conclusion

The Landlord's application is dismissed, without leave to reapply, due to insufficient evidence.

The Tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

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 15, 2024