



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above.

Background and Evidence

The month-to-month tenancy began on or about July 1, 2004. Rent in the amount of \$300.00 was payable on the first day of the month. No security deposit was collected.

The landlord(s) issued a 2 month notice to end tenancy for landlord's use of property dated May 30, 2008. No copy of the notice was submitted into evidence, however, the parties agreed that the reason for issuance of the notice was as follows:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The date by when the tenant must vacate the unit was August 1, 2008. The parties agreed that the tenant was compensated in the amount of 1 month's rent on or before the effective date of the notice, pursuant to the provisions set out in section 51 of the Act (**Tenant's compensation: section 49 notice**).

Subsequent to the tenant's having vacated the unit, the landlord's agent testified that work undertaken in the unit included, but was not necessarily limited to, removal of the old carpet, painting and replacement of some plumbing fixtures. Following completion of the work, the unit was re-rented effective on or around September 10, 2008. The landlord's agent testified that the principal reason for requiring the tenant to vacate the unit was associated with difficulty the contractor anticipated in working effectively with the tenant while the work was being completed.

Arising from the circumstances surrounding the end of her tenancy, the tenant seeks compensation in the amount of 2 months' rent pursuant to section 51 of the Act. The tenant takes the position that, in addition to anything else, the landlord's primary motivation for ending the tenancy was related to a desire to introduce an immediate increase in the monthly rent.

Analysis

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**. In particular, section 49(6)(b) of the Act states:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Section 51(2) of the Act provides as follows:

51(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline # 2 speaks to **Ending a Tenancy Agreement: Good Faith Requirement**. In part, this guideline provides as follows:

The “good faith” requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a “good faith” intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a “good faith” intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.

Based on the testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord’s use of property. I also find that the tenant was

appropriately compensated in the amount of 1 month's rent on or before the effective date of the notice.

I note that work undertaken in the unit was completed in a relatively short period of time after the end of tenancy, and prior to the time when the unit was re-rented. Further, it was apparent during the hearing that there is a feeling of some mutual animosity between the parties. The landlord's agent indicated that establishing what she considered was an agreeable and cooperative relationship with the tenant had at times been challenging. Related to this sentiment, I note the landlord's agent's reference to difficulty anticipated by the contractor in relation to working cooperatively with the tenant while upgrades were being completed.

In the result, I am not persuaded that work done in the unit could not have been completed while the tenant maintained occupancy. Further, the landlord did not dispute that rent was increased following completion of the upgrades in the unit.

On a balance of probabilities, I find that the landlord(s) has failed to meet the burden of proof required to establish that there was a good faith component to ending this tenancy. Accordingly, pursuant to section 51 of the Act, I find that the tenant has established a claim of "double the monthly rent payable under the tenancy agreement" which is \$600.00 (\$300.00 x 2).

As the tenant has succeeded in her application, I also find that she is entitled to recover the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$650.00**. Should it be necessary, this order may be served on the landlord(s), filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 12, 2009

Dispute Resolution Officer