



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC and FF

Introduction

This application was brought by the tenants on December 9, 2011 seeking a Monetary Order for the equivalent of two months' rent on the grounds that the landlord did not use the rental unit for the purposes stated in a Notice to End Tenancy for landlord use.

Issue(s) to be Decided

Have the tenants proven that the landlord failed to use the rental property for the purpose stated in the Notice to End Tenancy?

Background and Evidence

The tenancy in question began on August 15, 2010 and ended on October 31, 2011 pursuant to a Notice to End Tenancy for landlord use served on August 31, 2011 under section 49 of the Act. Rent was \$900 per month and the landlord returned the \$450 security deposit in full and the tenants were given one-month's free rent as provided for by section 51 of the Act when a tenancy is ended for landlord use.

The tenancy in question was in one of two suites in the basement of the rental building, the second of which was not self-contained as it did not qualify for a stove under local bylaws. It had not been occupied during the subject tenancy, and the landlord had offered it to the applicant tenants if they wished to have more room.

The notice to end had stated that the landlord had all necessary permits and approvals required by law to repair the rental unit in a manner that required vacant possession.

The attending tenant said that she came to question the bona fides of the notice to end because she learned that another family had moved into the rental unit in mid December and they were occupying both suites at higher rent.

She said the local plumbing inspector had advised her that the permit issued for the work appeared to affect only the external water connection and may not have required vacant possession.

The landlord gave evidence that the subject tenants had complained about a lack of heating from the hot water radiant heating system and as she had been advised that because remediation would require opening floors and walls, vacation possession was required to complete the work.

The attending tenant concurred that heat had been an ongoing problem and the landlord submitted a letter from the upstairs tenant also complaining of the heat.

The landlord gave uncontested evidence that one of the subject tenants had been expressing a wish to move to a location closer to her work, also a factor in the timing of the work.

The landlord submitted a copy of a work permit issued in her name and specifying the name of the plumbing company that billed her for the work.

The landlord submitted a paid invoice for \$2,307.25 from the plumbing company for removal and replacement of the existing heat exchanger and locating and repairing a leak in the radiant floor heating. A second invoice from another company claimed \$1,000 for a changed pilot assembly, thermocouple, cleaning a mixing valve, system flushing, and supply and installation of a new circulating pump. A third invoice claimed \$840 for repairing the floor and re-cementing and tiling. In total, the repairs came to \$4,127.45.

Two other receipts totalling \$195 covered general cleaning and moving a television left behind by the tenants.

Analysis

Section 51(2)(a) of the *Act* provides that a tenant may make claim for an equivalent of two months' rent if, "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."

On the basis of the evidence before me, I am satisfied that the work undertaken by the landlord was necessary and timely and that the landlord utilized the rental unit for the purpose stated on the Notice to End Tenancy of August 31, 2011.

Therefore, I find that the tenants are not entitled to further compensation as requested.

Conclusion

The application is dismissed on its merits 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 *Residential Tenancy Act*.

Dated: February 21, 2012.

Residential Tenancy Branch