



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 21, 2013 and amended on January 24, 2013, by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be awarded a Monetary Order?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: previous Dispute Resolution Decisions from July 27, 2012 and August 28, 2012; the Tenants' written submission; various e-mails and written communication between the parties; the tenancy agreement; a real estate listing; a 2 Month Notice issued July 24, 2012; and Canada Post receipts.

The Landlord submitted documentary evidence which included, among other things, copies of: their written submission; list of witnesses; e-mail and written communications between the parties; reference to and or copies of previous Dispute Resolution Decisions from July 23, 2012, August 28, 2012, and January 22, 2013; a list of

witnesses; photos of the rental unit during the tenancy; and a letter from the municipality dated August 2, 2012, confirming that a permit is not required for their repairs.

The following facts were discussed and agreed upon during this proceeding:

- The parties entered into a written month to month tenancy that began on August 1, 2007;
- Rent was payable on the first of each month in the amount of \$1,200.00 and the Tenants paid \$600.00 on July 7, 2007;
- The parties attended dispute resolution on July 24, 2012 where the Tenants were successful in disputing a 1 Month Notice;
- On July 24, 2012, the Tenants were served a 2 Month Notice to end tenancy for landlord's use for the reason that: *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 parties attended dispute resolution on August 28, 2012, during which the Tenants testified that they were not disputing the 2 Month Notice and would be vacating the unit in accordance with the Notice on October 1, 2012;
- The Landlords provided the Tenants a copy of the letter dated August 2, 2012, issued by the municipality indicating the repairs/renovations do not require a permit located and found at page 47 of Landlord's evidence;
- The Tenants alleged the Landlords completed approximately (8) days of renovations while the Landlords stated they completed twelve (12) seventeen (17) hour days of renovations / repairs prior to re-listing the property for sale; and
- The Landlords entered into an agreement to sell the property which transferred title on February 28, 2013.

The Tenants submitted that they are of the opinion that the Landlords did not use the rental unit as intended as noted on the 2 Month Notice to end tenancy issued July 24, 2012, because

1. The landlords failed to use the unit for the required minimum of 6 months' time; and
2. The landlords failed to renovate to the extent of which required the unit to be vacant.

The Landlords argued that their submission of evidence supports that they did follow through with the intended use of the property by completing the following repairs and renovations:

- Wall repairs, patching, sanding, and two coats of paint in the entire house
- Removed painted and reinstalled all baseboards
- Cleaned all carpets and had two bedroom carpets replaced
- Sanded and re-shellacked the living room hardwood floor with an electric sander which took two evenings to complete and two days to dry
- Removed and cleaned all windows during the cold days of October

- Cleaned up the yard, removing years of debris, and attending to required landscape maintenance
- Sanded and painted the back deck and front stairs
- Pressured washed the exterior vinyl siding
- Had interior pocket doors replaced
- Other miscellaneous repairs such as replacement of a water tap

The Tenants confirmed that they had knowledge that the Landlords have attempted to sell the unit since 2010 and that the Landlords informed them they it was still their intention to sell the property.

In closing the Tenants argued that the Landlords did not issue the Notice in good faith because they are of the opinion they wanted the unit vacant to sell it and not to renovate it. They stated that the unit could have been occupied during all of the above listed repairs which were previously determined to be regular maintenance. The Tenants also argued that the Landlords did not complete all of the repair items that were listed on a letter they received from the Landlord with the 2 Month Notice.

The Landlords stated that there was no way the house could have been occupied during the renovations because it was simply too cold, too dusty, and too smelly in the house during the time the work was being performed. They noted that they had the windows taken out for a day or two in the middle of October which caused the house to be extremely cold. Also, the hardwood floor was sanded in areas with an electric sander and then shellacked which was very smelly. They said they never hid the fact that their intentions from 2010 were to sell the house or that repairs were required before that could be accomplished.

Analysis

Section 51 (2) of the Act stipulates that a tenant is entitled to compensation 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.

When a 2 Month Notice is issued for the purpose of repairs or renovations the interpretation of section 51 (2) is not to be taken literally in that the repairs or renovations do not have to go on for, or last for, a period of six months. Rather, I find the interpretation is such that the landlord is required to take steps to initiate the repairs or renovations within a reasonable period and within six months after the effective date of the notice.

The facts confirm the Tenants attended dispute resolution on August 28, 2012, and chose not to dispute the 2 Month Notice; rather they chose to vacate the rental unit in accordance with the Notice.

The undisputed testimony is that the Landlords initiated and complete renovations or repairs, as listed above, shortly after regaining possession of the unit. Once the repairs and renovations were completed the Landlords followed through with their well known intentions of selling the property.

Upon review of the Tenants' arguments I find they have attempted to argue the validity or good faith of the Notice which is not the matter before me. Those arguments would be pertinent to a claim where the Tenants were disputing being evicted with a 2 Month Notice and were asking the Notice to be cancelled. They also argued that the Landlords did not complete what the 2 Month Notice stated they would do because in their opinion the work that was performed would not require the unit to be vacant and it was not done for six months.

Upon review of the volumes of documentary evidence submitted by both parties and with consideration of:

- the totality of past events and disputes;
- the fact the Tenants had known the Landlords intent to sell the property has been ongoing since 2010;
- the state of the rental property while it was occupied by the Tenants' with their possessions; and
- the type of renovation or repair work performed after the Tenants vacated;

I find the Landlords have complied with the reasons for issuing the 2 Month Notice. Accordingly, I dismiss the Tenants' application, without leave to reapply.

The Tenants have not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenants' application, 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: April 16, 2013

Residential Tenancy Branch