



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking the equivalent of two months of rent in compensation from the Landlord under section 51(2) of the Act, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

The Tenant had initially named only the property management company as a respondent in this matter, as he had no knowledge of who the owner of the property was. Only the name of the property management company was used in the written tenancy agreement and on the two month Notice to End Tenancy, according to the parties.

The owner appeared at the hearing, as the property management company had notified him about the claims of the Tenant and provided him with a copy of the Tenant's evidence. In their evidence the property management company included a schedule of parties which named both the owner Landlord and his spouse as respondents.

During the course of the hearing the owner agreed that he should have been included as a respondent in this matter, and the Tenant agreed to that as well. Therefore, I have

amended the application and style of cause in this matter to include the name of the owner of the property as a respondent, pursuant to section 64(3) of the Act.

Issue(s) to be Decided

Has the Landlord breached section 51 of the Act?

Background and Evidence

The Tenant testified that the tenancy began in February or March of 2013, and the rent was \$1,600.00 per month. The Tenant paid a security deposit of \$800.00. The security deposit was dealt with at the end of the tenancy.

The Tenant testified that when they were renting the property they made it clear that they were looking for a long term rental situation. According to the Tenant the property management company assured him that the owner had no plans to sell the rental unit.

On or about the 28th of May 2014, the Tenant was contacted by the property management company and was asked if he was interested in purchasing the property as the owner was interested in listing the property for sale. The Tenant was unable to make an offer on the property. The Tenant was asked if he would mind having a realtor come through the property the next day in order to appraise it for sale. The Tenant agreed to this. On May 31, 2014, the Tenant was served with a two month Notice to End Tenancy for Landlord's use, with an effective date of July 31, 2014, (the "Notice").

The Notice listed two grounds why the Landlord wanted to end the tenancy. It informed the Tenant that the Landlord or a close family member intended to occupy the rental unit, and also that the Landlord had all the necessary permits and approvals required by law to perform renovations. The Tenant testified that he was informed the Landlord would move into the rental unit and do the renovations. The Agent gave the Tenant a list of renovations that the Landlord intended to perform, as follows:

- "Refinishing of dining room hard wood floors – including; scrapping; sanding; recoating
- Replacing all carpets deemed necessary including but not limited to the master bedroom; main stairs
- Replacing kitchen flooring
- Refinishing or replacing countertops
- Replacing kitchen flooring if deemed necessary

- Repairing and painting all rooms deemed necessary including baseboards, door frames, window casings.”

[Reproduced as written.]

I note that it does not appear that any of the proposed renovations would have required permits or approvals as these do not appear to have been structural in nature.

The Tenant also testified that he did not think the Landlord required vacant possession to perform these renovations, as they were mostly cosmetic. Nevertheless, the Tenant and his family did move to another rental unit due to the Notice. The Tenant testified it was very inconvenient and they could only find a smaller home to rent.

The parties agreed that the Tenant was compensated with the one month of rent required under the Notice, and as the Tenant moved out early, was returned a pro-rated amount of rent.

The Tenant's new home was close to the subject rental unit and the Tenant and his family had friends that live close to the subject rental unit, so they drove past the rental unit often on their visits. The Tenant noticed that no renovations were apparent and it did not appear that anyone was living in the rental unit property. The Tenant asked neighbours around the subject rental unit who informed them they saw no one living there. The Tenant testified that he saw an exterior front door light on night and day for several months, but saw no other lights.

The subject rental unit was listed on a real estate listing website and the Tenant noticed the pictures of the rental unit were identical to what they saw when they lived in the house. The Tenant alleged that no renovations had been done to the rental unit.

The Tenant testified that he did not think the rental unit became occupied until November of 2014. He was unsure if the rental unit was occupied by the Landlord or a close family member. The Tenant alleges this was an illegal eviction.

The Tenant is claiming for two months of rent in compensation of **\$3,200.00** plus the **\$50.00** filing fee for the Application.

The Agent and the Landlord had no questions for the Tenant in cross examination.

In reply, the Agent for the Landlord testified that the Landlord provided the Notice in good faith. The Agent testified that the carpets in the rental unit were mostly original to when the home was new and had to be replaced.

The Agent testified that she was aware that the Landlord was going through a hard time at the point when the Notice was issued.

The Agent testified that the pictures referred to by the Tenant on the website had been taken even before the tenancy with this Tenant took place. The Agent testified that her job ended as soon as the Tenant vacated the property.

In reply the Landlord testified that he received the rental unit property through the estate of his mother, who passed away in 2011. He decided to use the same property management company that his mother had used. He testified that as the estate was going through probate, he was out of pocket for many expenses.

The Landlord testified he tried to refinance to get out of his monetary bind, but this financing did not come through so he was unable to afford to do the renovations he had planned to do.

The Landlord testified that he did not think the renovations required permits to pull. He testified he was travelling between the city where the rental unit is located and another city where he lives. He would work on the subject rental unit and then eat at his brother's home. He testified that all he could afford to do was replace the carpet, and fix the squeaky floors, in the master bedroom.

The Landlord testified that in mid-November his first cousin moved into the rental unit to live.

In reply, the Tenant testified that while he sympathized with the Landlord over the loss of his mother, the move that the Landlord required placed a hardship on him and his family, and cost the Tenant a great deal financially. The Tenant explained he had to accommodate his children and their schooling. The Tenant also testified that he was at a loss to understand why the Landlord would require him to move out without the financial planning in place to conduct the proposed renovations. The Tenant testified he had been a very good Tenant and in fact had paid the first six months of rent in advance.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Landlord has breached section 51 of the Act by failing to use the rental unit for the stated purpose for at least six months following the eviction of the Tenant, and further, by failing to take the steps to accomplish the renovations within a reasonable time after the effective date of the Notice. Section 51 of the Act states, in part:

...

(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.

[Emphasis added.]

In this instance the Landlord had insufficient evidence he actually occupied the rental unit for any period of time. It appeared from his testimony that he was only in the rental unit sporadically to replace the carpet and fix the floor in one room when he could afford to do this work. I find he did not do any of the other renovations he informed the Tenant he planned to do and for which he required the Tenant to provide vacant possession.

I also find the Landlord rented the rental unit to another party, who is not a close family member as required under section 49 of the Act. Section 49 defines a close family member as the Landlord's parent, spouse or child, or, the parent or child of the Landlord's spouse. In this instance the Landlord had a cousin move into the rental unit in November which is less than six months after the tenancy had ended in July. I find that the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

For these reasons I find the Landlord has breached the Act. Therefore, pursuant to section 51(2), as set out above, I find the Tenant is entitled to double the monthly rent payable under the tenancy agreement of \$3,200.00 and to recover the \$50.00 filing fee for the cost of the Application.

Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of **\$3,250.00**

The Tenant must serve the Landlord with the monetary order, and may enforce the order in the Provincial Court, Small Claims division.

Conclusion

The Landlord breached the Act as he did not accomplish the stated purpose for ending the tenancy and did not use the rental unit for the stated purpose for at least six months.

The Landlord is ordered to pay the Tenant the sum of **\$3,250.00**, comprised of two months of rent and the filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 12, 2015

Residential Tenancy Branch

