



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord's agent (the landlord) confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2006 for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit was \$975.00 per month and increased to \$1,125.00 over the course of the tenancy.

The tenants testified that the landlord had served them with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) on June 25, 2015 in person. The Notice had an effective date of August 31, 2015 and stated 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 tenants vacated the rental unit without disputing the Notice on September 01, 2015.

The tenants testified that they did receive an offer after being served the Notice to renew their tenancy agreement at a higher rent and not including any utilities which were presently included in their rent. At that time they thought the landlord was going to be doing major renovations and were told they could stay but only if they signed a new agreement. The tenants believe now that the landlord was just trying to evict them to raise the rent.

The tenants testified that in September, 2015 they saw an advertisement posted on an online site advertising the unit for rent at \$1,700.00. When they looked back a few days later they saw that the unit had been rented.

The tenants testified that they enquired at the City and determined that the only permits the landlord had applied for were to replace a toilet. This would not require vacant possession of the rental unit and the tenants therefore seek compensation equal to two months' rent of \$3,400.00. The tenants also seek to recover their filing fee of \$50.00.

The landlord testified that when they issued the Notice the only permits required were for the plumbing for the toilets. Both toilets in the unit were replaced and a property inspector from the City signed off on this work to close the permit. The landlord testified that they did other substantial work in the unit. The upper kitchen cupboards were taken

down, all the appliances were removed, all the lighting fixtures inside and outside were removed, all the walls were patched and the entire house was re-painted. Some of the appliances were then reinstalled and some were replaced and installed, some other plumbing work was completed, the kitchen cabinets were replaced and the lights were all replaced with LED lights.

The landlord testified that this work was completed as advised by a real estate agent and required vacant possession due to the scope of the work. This was to add value to the property. During the course of the renovations the landlord decided not to sell the property as the real estate agent advised that the rental market had increased dramatically. The landlord then advertised the unit for rent and it was re-rented on October 01, 2015 at the higher rent.

The landlord testified that the tenant called to try to negotiate the tenancy agreement and made an offer to renew the tenancy agreement; however, the tenant called back a few weeks later and said they had purchased a property instead.

The tenant testified that they had not asked for any work to be done in the unit. The toilets did not need to be replaced and no other improvements had been requested. The improvements described by the landlord would not require vacant possession of the rental unit. The landlord just wanted the tenants out so he could get more rent.

The landlord testified that the tenant's monetary claim is also based on the rent paid by the new tenants and not the rent the tenants were paying at the end of their tenancy.

Analysis

When tenants apply for compensation under s. 51 of the *Act* because they believe the landlord has not complied with the reason indicated on the Notice to End Tenancy, then the burden of proof falls to the tenants to show that the landlord did not have necessary

permits or approvals required by law in place to do repairs in the rental unit or that the repairs did not require vacant possession.

The tenants' argument is that the landlord only had permits for the toilets and no other permits had been requested or obtained. The tenants further argue that the scope of work done by the landlord would not have required vacant possession.

The landlord argues that the work did require vacant possession and only the plumbing permit was required by law.

I have considered both arguments in this matter and find both arguments have some merit; however, the burden of prove still lies with the tenants and the matter of vacant possession is subjective. The tenants had the opportunity to dispute the Two Month Notice if they felt it had been issued in bad faith and could have argued at that time that the landlord did not have necessary permits or approvals in place or was not going to do repairs to the unit; however, the tenants choose to vacate the rental unit instead of disputing the Notice. In this matter I find the landlord's claim that he only required permits for the plumbing to have merit as much of the work described is likely not to need permits or approvals.

What I must therefore decide on is whether or not the renovations done in the unit could have been done while the tenants continued to reside there or whether the landlord did in fact need vacant possession of the unit to undertake this renovation work. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

It is almost impossible for me to decide what level of work the tenants feel they could put up with while living in the rental unit while they had no toilets, no upper kitchen cabinets and no appliances and while the walls were repaired and the unit repainted.

Furthermore, the tenants have not shown that this work was not completed as described by the landlord. The landlord does have the right to update and maintain his property at regular intervals. Consequently, on a balance of probabilities, I am satisfied from the evidence presented that the unit did require vacant possession while this work was completed. Consequently, I am not satisfied that the tenants have met the burden of proof in this matter that this scope of work did not require vacant possession or that the landlord did not have the necessary permits or approvals required by law in place. The tenants' application for compensation equal to two months' rent is therefore dismissed.

As the tenant's claim has no merit the tenant must bear the cost of their filing fee

Conclusion

The tenant's application is dismissed in its entirety 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: December 10, 2015

Residential Tenancy Branch

