



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant primarily represented himself with the assistance of his advocate.

As both parties were in attendance I attempted to confirm there were no issues with service of the tenant's application for dispute resolution or the party's evidentiary materials. The landlord confirmed receipt of the tenant's materials and in accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application package.

The landlord testified that he served the tenant with his evidence by registered mail but the tenant disputed receiving the landlord's evidence. As I found that the landlord's evidence is simply correspondence addressed to the tenant outlining the landlord's position regarding the present application, I found that its inclusion would not unfairly prejudice the tenant and allowed its inclusion pursuant to Rules of Procedure 3.17.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages and loss as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy ended on June 1, 2016 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). The 2 Month Notice provides the reason for the tenancy ending as; the rental unit will be occupied by the landlord or the landlord's spouse or close relative. The monthly rent at the end of the tenancy was \$385.87.

The landlord testified that no one is currently residing in the rental unit as it is uninhabitable. The landlord said the rental unit required considerable repairs, cleaning and work after the tenant vacated. The landlord said that the work is ongoing and the unit is still not ready to be inhabited. The landlord projected an end of November, 2017 date as when all repairs are expected to be completed. Among the issues the landlord cited as required are; installing a new gas furnace, removing the tenant's personal items and waste, pouring a foundation for the rental unit, dealing with pest infestation and lawn care. The landlord testified that a new foundation has been set and the other ongoing issues will be completed in due course. The landlord said that the tenant left the rental premises in an unusable condition and the restoration must occur before he or one of his daughters occupies the rental unit.

Analysis

Section 51(2) of the Act provides that 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.

The landlord stated on the 2 Month Notice that the rental unit would be occupied by the landlord or a close family member. The landlord testified that the intention is that the rental property will be occupied by he or one of his adult daughters, but renovations and repairs must first be completed.

I find that the landlord has not accomplished the stated purpose for ending the tenancy in a *reasonable* period of time. As of the date of the hearing, it has been over 13 months since the tenant vacated the rental unit on June 1, 2016. I find there is little

evidence in support of the landlord's position that repairs are necessary and ongoing. I find the landlord's position that the rental unit is uninhabitable to be unreasonable given that the tenant was able to occupy the unit until the tenancy ended. I do not find the timeline of the repairs undertaken and completed by the landlord to be at all reasonable. While some repairs may have been necessary I find the speed with which work is being done to be inexcusable. I find the fact that there has been little accomplished after more than a year to be unreasonable.

I note that if the rental unit needed major repairs which required the tenant to vacate the rental unit, then the landlord ought to have indicated that as the true reason to end this tenancy. I do not find the deficiencies cited by the landlord to be undiscoverable until the tenant vacated the rental unit. The landlord ought to have known prior to the tenancy ending if major repairs were going to be necessary in order for he or his close family member to occupy the rental unit. I do not find the nature of the deficiencies that the landlord claims to require repairs that would take over a year.

I find that the landlord has not taken reasonable steps to accomplish the stated purpose of having the rental unit occupied by himself or his close family member. Consequently, I find that the tenant is entitled to a monetary order in the amount of \$771.74, double the monthly rent under this tenancy agreement.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$771.74 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 12, 2017

Residential Tenancy Branch