



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 13, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, his Counsel and Agent and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenants’ evidence package was exchanged with the Landlord; however, the Landlord’s evidence package was not exchanged with the Tenants. Therefore, the evidence package submitted to the Residential Tenancy Branch by the Landlord was excluded pursuant to the *Rules of Procedure - Rule 3*.

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.

Issues to be Decided

Should the Tenants receive a Monetary Order for compensation pursuant to Section 51(2) of the *Residential Tenancy Act*, that was in force in March 2018?

Should the Tenants receive a Monetary Order for compensation for an illegal rent increase contrary to Section 42 of the Act?

Should the Tenants receive reimbursement for the Filing Fee?

Background and Evidence

The Landlord and the Tenant agreed to the following terms of the tenancy and the details regarding the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated March 8, 2018, (the "Notice"):

The six-month, fixed term tenancy began on September 1, 2013 and continued on as a month-to-month tenancy. The monthly rent started out as \$1,400.00 and by the end of the tenancy was \$1,451.50. The Landlord collected and has since returned the security deposit of \$700.00. The Tenants moved out of the rental unit on April 30, 2018.

The Landlord issued the Notice to the Tenants on March 8, 2018, with an effective vacancy date of May 31, 2018. The Notice was issued based on the Landlord's reason to renovate the rental unit in a manner that required the rental unit to be vacant.

Tenants' Evidence:

The Tenants provided testimony and claimed that the Landlord's eviction was based in bad faith. The Tenants felt that the Landlord did not complete renovations that were extensive enough to justify the end of the tenancy.

The Tenants stated that a new tenant moved into the rental unit seven days after the Tenants had moved out of the unit. The Tenants provided copies of a signed statement from a neighbour and the new tenant that stated that only carpets were replaced and painting was completed in the rental unit.

One of the Tenants testified that he attended the rental unit after the new tenant moved in and only noticed that the Landlord had installed new flooring upstairs.

When questioned, the Tenant acknowledged that they did not dispute the Notice, that the Tenants located a new rental on March 27, 2018, and in early April provided notice to the Landlord that they were moving out on April 30, 2018.

The Tenants stated that that they felt like they were forced to vacate. They didn't want to take a chance to dispute the Notice, potentially lose and be forced out with short

notice. The Tenants believed that the renovations could have been completed while they were still living in the rental unit.

The Tenant provided testimony about the rent increases; however, acknowledged that they did not incur any losses to illegal rent increases and had moved out before the second (illegal) rent increase potentially would have occurred.

Landlord's Evidence:

The Landlord testified that the Notice was issued to the Tenants with the intention to complete renovations that included the replacement of carpets, painting of the rental unit and to make general repairs.

When the Tenants provided notice that they were going to move out of the rental unit by April 30, 2018, the Landlord immediately started advertising the rental unit to find new tenants and also made arrangements to complete the planned renovations in early May 2018.

The Landlord stated that the carpets in 3 bedrooms and the hallway were replaced with laminate flooring, the entire rental unit was painted and general repair and cleaning was completed during the first week of May 2018. The new tenant moved in on May 7, 2018.

The Landlord said that an administrative error occurred when the Landlord provided the Tenants a second notice of a rent increase that was within a year's time. The Landlord did not collect a higher rent based on the error, nor did they attempt to enforce the notice of rent increase.

Analysis

Section 49(6) of the Act states that a Landlord may end a tenancy if the Landlord has all the necessary permits and approvals required by law and intends, in good faith, to renovate or repair the unit in a manner that requires the rental unit to be vacant. Section 49(8) of the Act states that a Tenant may dispute a notice to end tenancy by making an Application for Dispute Resolution within 15 days after the date the Tenant received the Notice.

I accept the undisputed testimony and evidence from the Tenants that they did not dispute the Notice and moved out of the rental unit on April 30, 2018.

In March of 2018, when the Tenants were issued the Notice, Section 51 of the Act stated that if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 (Landlord's Use of Property) within a reasonable period after the effective date of the notice the Landlord must pay the Tenant an amount that is equivalent of double the monthly rent payable under the Tenancy Agreement.

I accept the Tenant's testimony that he observed that the flooring in the upper bedrooms of the rental unit had been replaced after his tenancy ended. The Tenant also supplied evidence that both the neighbour of the rental unit and the new tenant agreed that the Landlord completed some renovations including two days of painting and replacing the carpets after the Tenants moved out of the rental unit. I also accept the Landlord's affirmed testimony that they commenced renovations, upon the Tenants moving out of the rental unit, that consisted of replacing the carpets with laminate flooring in the three upstairs bedrooms and hallways, painting of the rental unit and some minor repairs and cleaning. As a result, I find that the Landlord accomplished the renovations, as referred to in the Notice, within a reasonable period after the end of the tenancy, in accordance with Section 51 of the Act. I, therefore, find that the Tenants have been unsuccessful in establishing a monetary claim for double the monthly rent and I dismiss the Tenants' Application without leave to reapply.

I find that the Tenants failed to provide sufficient evidence that the Landlord breached Section 42 of the Act, in regard to rent increases. The Tenants admitted that they did not pay any rent as a result of illegal rent increases and did not incur any losses. As a result, I dismiss their Application for a Monetary Order for compensation due to an illegal rent increase.

The Tenants were unsuccessful with their Application for Dispute Resolution and I dismiss their request for reimbursement for the filing fee.

Conclusion

I find that the Tenants failed to provide sufficient evidence that the Landlord breached the Act and as a result, 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: September 5, 2018

Residential Tenancy Branch