



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOMES HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties confirmed the tenant served the landlord with the notice of hearing package and her submitted documentary evidence via Canada Post Registered Mail on September 14, 2018 and September 24, 2018. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person on January 2, 2019. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$15,175.68 which consists of her monthly rent for a 12 month period.

The tenant claims that the landlord served a 2 month notice to end tenancy issued for landlord's use of property (the 2 month notice) dated May 29, 2018. The 2 month notice sets out an effective end of tenancy date of July 31, 2018 and one reason selected as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse of child; or the parent or child of that individual's spouse).

The tenant claims that the landlord notified him that his "adult son moving in." The tenant claims that the landlord had applied for a building permit for major renovations to the rental unit, but as of September 2, 2018 the renovations have begun and the unit is still unoccupied. The tenant claims that the landlord has acted in bad faith and seeks compensation equal to 12 months of monthly rent for a total of \$15,175.68.

Both parties confirmed that the landlord served the tenant with the 2 month notice and the stipulated reason listed.

The tenant claims that the landlord has in "bad faith" issued the 2 month notice for the wrong reason. The tenant claims that a 4 month notice should have been issued for renovations and that the landlord has done this to avoid the extended notice time. The tenant claims that she has viewed an advertisement for the unit as it shows a similar photograph of the view and of the bathroom on December 29, 2018.

The landlord has disputed the tenant's claims stating that the notice was issued properly for the landlord's son to occupy the space in good faith. The landlord provided undisputed affirmed testimony that the landlord's son currently occupies the rental unit. The landlord argued that there are other units in the rental building advertised for rent and that the one next to the rental unit in dispute is also being advertised for rent in reference to the photographs referred to by the tenant. The landlord stated that the neighboring unit is similar to the disputed unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, both parties confirmed that the landlord served the tenant with the 2 month notice as claimed.

Residential Tenancy Policy Guideline “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, the tenant has argued that she “believes” that the landlord in bad faith issued a 2 month notice to end tenancy for landlord’s use instead of a 4 month notice to end tenancy for Demolition, Renovation, Repair... The tenant stated that based upon the amount of Repair/Renovations and the issuance of a City Permit leads the tenant to believe otherwise.

The landlord has disputed the tenant’s claims providing both verbal and written submissions that the rental unit has been occupied in good faith as per the 2 month notice by the landlord’s son. The landlord provided undisputed affirmed evidence that

the landlord's son does occupy the space and noted that direct testimony could be provided in conjunction with documents (copies of text message exchanges, receipts for furniture). The landlord further argues that the tenant has failed to provide evidence showing that the landlord failed to use the unit contrary to the reason stated on the Notice. The landlord has further argued that the Act does not prohibit the landlord from making improvements to the unit prior to occupying it.

Both parties have provided and referred to a copy of a building permit issued which "work includes kitchen renovation, bedroom closet removal, double door addition between dining area and living area and open up the storage room in living area". Plumbing and Electrical Permits were also issued. The landlord has provided undisputed affirmed evidence that the rental building is approximately 100 years old and that extensive work to the premises and the unit were necessary. The landlord submitted that electrical wiring, electrical panel and plumbing were replaced.

The landlord argued that the Act does not require the landlord to immediately use the unit for the purpose stated after the tenancy ends. The landlord provided evidence:

- the tenancy ended on July 28, 2018
- the landlord applied for permit on July 8, 2018
- the landlord received the permit on August 3, 2018
- the demolition/renovations were conducted in a reasonable amount of time
- the landlord's son occupies the rental unit

I accept the undisputed affirmed evidence of both parties and find on a balance of probabilities based upon the submission and documentary evidence of both parties that the landlord's 2 month notice was not issued in "bad faith". The tenant's monetary claim is dismissed. The landlord provided clear and concise evidence that the rental unit is occupied by the landlord's son. The landlord disputed the tenant's claim that at no time has this rental unit been advertised for rent. The landlord was quite candid explaining that many other units in the same premises are being advertised for rent, in particular a neighboring unit with the same view. Although the tenant has alleged that she "believes" the unit to have been advertised for rent, insufficient evidence has been provided. The tenant relied solely on two photographs in the advertisement of a view from the unit as well as an interior photograph of a bathroom. No details of which unit that it refers to was provided. The tenant further relies upon a copy of an issued building permit stating that the landlord should have issued a 4 month notice for renovations. I find that such a notice would not obtain the intended result which is for the landlord's son to occupy the rental space.

Conclusion

The tenant's application is dismissed 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: January 14, 2019

Residential Tenancy Branch