Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the Tenant for a monetary order for compensation pursuant to section 67 of the Residential Tenancy Act (the "Act").

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord's Witness was excluded from the hearing until both Parties presented their case and was then called into the hearing. The Witness provided evidence under oath.

Issue(s) to be Decided

Did the Landlord take steps to occupy the rental or occupy the rental unit within the time required under the Act?
Are there extenuating circumstances that prevented the Landlord from occupying the rental unit?
Is the Tenant entitled to the compensation claimed?

Background and Evidence

The following are agreed facts: The tenancy of a coach house, under written agreement, started on May 1, 2016. The tenancy agreement did not restrict smoking. The Landlord purchased the property containing the coach house shortly after the tenancy started. For the last part of the tenancy rent of $881.00 was payable on the

first day of each month. The tenancy was ended by the Landlord who served the Tenant in January 2018 with a two month notice to end tenancy for landlord's use (the "Notice"). The reason stated on the Notice was that the Landlord intended to occupy the coach house. The effective date of the Notice was March 30, 2018. The Tenant made an application to dispute the Notice and then later withdrew the application. The Tenant moved out of the coach house on April 30, 2018 and the security deposit has been dealt with.

The Tenant states that the Landlord never moved into the coach house and that it remained empty from the date of the move-out until December 31, 2018. The Tenant states that the tenants who were occupying a basement suite of the main house on the property, and two additional neighbours who did not live on the property informed the Tenant that nobody moved into the coach house until January 1, 2019.

The Landlord states that after renovating the coach house and on June 15, 2018 the Landlord moved in a few items. The Landlord states that at the time she was residing with her daughter at another residence owned by the daughter. The Landlord states that within a few hours of being inside the coach house the Landlord developed a bad allergy to the smoke smell in the coach house, that it was causing health concerns and that the Landlord could no longer be inside the coach house. The Landlord states that despite the walls having been painted twice and the flooring replaced the smell was still strong. The Landlord states that her contractor told her after this work was done that if the new flooring and paint did not remedy the smell then the only other option was for the Landlord to remove drywall. The Landlord states that she was not going to rip out the drywall. The Landlord states that she attempted to be in the coach house for a few hours at a time over a couple of weeks but that, probably, in the middle of July 2018 the Landlord removed her items.

The Landlord states that the Tenant left a fair amount of damage to the coach house and that the Tenant agreed for the Landlord to retain the security deposit to repair holes

in the walls. The Landlord states that no application was made to claim any further damages to the coach house that the Landlord states cost a lot more money than the security deposit would cover. The Landlord also states that she believed that the Tenant would not have been able to pay the extra costs for the damage.

The Landlord states that in July 2018 she went to a real estate agent, the Witness for this proceeding, about selling the coach house and her concerns that prospective purchasers would smell the smoke. The Landlord states that she needed a few months to prepare the property for sale and that the market was “dead” at the time so the coach house, along with the main house, was listed around September 11, 2018. The Landlord states that the entire property was sold on November 4, 2018. The Landlord states that she had to find a “quick sell” as bills were accumulating. The Landlord states that she could not afford to pay the mortgage, taxes and other expenses.

The Landlord states that prior to the listing for sale, the main house had been occupied by renters on the upper part and renters on the lower part. The Landlord states that the upper tenants stopped paying rent when the Landlord moved into the coach house. The Landlord confirms that an application for dispute resolution in relation to the upper tenants unpaid rent was made on June 12, 2018 and was cancelled June 20, 2018 because the upper tenants had moved out. The Landlord states that no attempt was made to rent the upper house again as it was “trash” and filled with “dog shit”. The Landlord states that no other application was made to recover any rent or damage losses from these tenants.

The Tenant states that the only damage left to the coach house was two walls holes. The Tenant states that the coach house needed paint as it had not been painted in 9 years and that the carpets needed cleaning. The Tenant states that he only smoked occasionally and never smelled smoke in the coach house. The Tenant states that the coach house is situated over a garage and that if a car in the garage was idling exhaust

could be smelled in the coach house. The Tenant states that the Landlord is exaggerating a smoke smell.

The Witness provided an affidavit dated March 7, 2019 that states that the Landlord moved into the coach house but gives no date for that move in. The Witness states that the Landlord originally wanted to retain the Witness as a property manager and that the Landlord wanted to move into the coach house. The Witness states that the coach house was first seen by himself in late July 2018 after it had been painted and that smoke smell was present. The Witness states that the Landlord told the Witness that the smoke smell was so bad that it seeped into the Landlord's furniture that was inside the coach house. The Witness states that with his several years' experience he believed that a paint job would not cover a smoke smell. The Witness states that the Landlord did not move into the coach house because the smoke smell was noticeable to prospective buyers. The Witness states that when the Landlord could not move into the coach house the Landlord was advised to list the property. The Witness states that when he saw the main house there was 3 feet of garbage left. The Witness states that from July to September 2018 the Landlord discussed the possible sale of the property with the Witness. The Witness states that full disclosure of the smoke smell was made at the showings. The Witness states that the Landlord spent $5,000.00 to $6,000.00 on the main house and built a deck for the coach house. The Witness states that an offer to purchase was accepted in the last week of September 2018 and the property was subsequently sold with a possession date of November 2, 2018. The Witness states that he has not been in the coach house since it sold other than for one day on November 3 or 4, 2018 and that the smoke smell was present on that day. The Witness states that there were no smokers in the main house and that the main house did not stink. The Witness states that after professional cleaning of the main house the smell from the feces was removed from the main house.

The Tenant argues that if two coats of paint and new flooring did not remove a smoke smell then one day of cleaning could not remove the smell of animal feces. The Tenant

argues that the Landlord is exaggerating the extent of the smell in the coach house. The Landlord counters that a smoker is not as sensitive to smoke smell as a non-smoker.

Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the Act provides that the landlord or, if applicable, the purchaser who asked the landlord to give the notice may be excused from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
> (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Act was amended with the above sections and came into force on June 6, 2018. As the Tenant was given the Notice prior to these sections coming into force and as the amendments are not retroactive I find that the above sections do not apply to the current dispute.

At the time the Notice was issued, Section 51(2) of the Act applied and provided that if

> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. It is undisputed that the stated purpose for the Notice was the Landlord's intention to occupy the coach house. Given the Landlord's evidence of the Tenant's move out date of April 30, 2018 and the renovations to the coach house being completed June 15, 2018 I find that this was a reasonable period for a delay in moving into the coach house after the Notice's effective date of March 30, 2018. Given the Landlord's own evidence that she was only in the coach house for a couple of hours over a couple of weeks between June 15 and July 15, 2018 I find that the Landlord did not occupy the coach house for at least six months after June 15, 2018. Further, given the Landlord's own evidence that that in July 2018 she needed time to prepare the property for sale and that the market was not good at the time, I find that the Landlord acted contrary to occupying the coach house with the intention to prepare the property for sale as early as three months after the Tenant moved out. For these reasons I find that the Tenant has substantiated that the Landlord failed to use the coach house for the reason stated on the Notice and that the Tenant is therefore entitled to double the monthly rent in the total amount of **$1,762.00** (881.00 x 2).

As the Act, prior to June 6, 2018, did not provide for the consideration of any extenuating circumstances that may relieve the Landlord of the obligation to pay the double rent, I find that the evidence that the Landlord gave for extenuating circumstances may not be considered.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$1,762.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 21, 2019

Residential Tenancy Branch