Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order of $9,660.00 for damage or compensation under the Act, regulation or tenancy agreement. The Tenant claims that the Landlords did not act in good faith in issuing the Two Month Notice to End Tenancy for Landlord's Use dated March 23, 2018 (the "Two Month Notice").

The Tenant applied for compensation equivalent to 12 times the monthly rent. The Tenant said she is eligible for this, because the Landlords evicted her so that they could move in; however, they never moved into the rental unit; they cleaned and renovated it, instead.

The Landlords, the Tenant, and the Tenant's advocate (the "Advocate") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the month-to-month tenancy began for the Tenant with a former landlord in April 2005. The Parties agreed that the tenancy between the Tenant and the Landlords in this Application began on February 16, 2007, with a monthly rent of $750.00, due on the fifteenth day of each month. The Parties agreed that the Tenant paid a security deposit of $375.00, and a pet damage deposit of $100.00. The Parties agreed that the monthly rent payable by the Tenant to the Landlords at the end of the tenancy was $805.00 per month.

The Landlords said they did not do a move-in condition inspection report for the rental unit, because they were not the owners when it was first rented to the Tenant. The Parties agreed that the Landlord did not do a move-out inspection of the condition of the rental unit, either. The Tenant did not apply for the return of her security deposit from the Landlord.

Landlord's Evidence

The Landlords said that in the first quarter of 2018, they were rebuilding their own residence and needed to move out for demolition work being done on March 1, 2018. The Landlords said they had decided to move into the rental unit.

The Landlords said they served the Tenant with the Two Month Notice, in order to move into the rental unit. They said they posted the Two Month Notice on the Tenant's door on March 24, 2018, with an effective vacancy date of May 31, 2018. The Tenant was deemed served with the Two Month Notice on March 27, 2018, pursuant to section 90 of the Act. The Tenant applied for dispute resolution for a monetary order on April 4, 2019.

In the hearing, the Tenant said that she moved out of the rental unit at the "end of May 2018", but that she did not give the Landlords her forwarding address.

In the hearing, the Landlords testified that they needed to move out of their own residence, because they were rebuilding it, so they decided to move into the rental unit.

In their written submission, the Landlords explained the situation, as follows:

> We served her with a Two Month Notice to Vacate by 31 May 2018. Upon possession of the property, we realized that it had not been well maintained and a great deal of work was required to make it habitable for us. It was filthy dirty and there was a hole in the living room floor which the tenant had agreed to repair in 2011 but had not done. Worst of all however was the overwhelming smell of cat urine. We were disgusted and realized that to dwell there for any time would require more work than we had anticipated. Even then, we had no idea how long it would take.

> As it turned out we spent the next 6 months doing renovations and repairs (exhibit F). It was onerous and during that time we were also occupied with building our new house. When we finally finished the renovation, it was late November. We were exhausted and in December we were planning to be away until the new year. By then we expected to be even more involved with the interior of our new house and we were hoping to move in by spring, so we abandoned the idea of moving to [the rental unit] and decided to re-rent it.
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> [reproduced as written]
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> *Tenant's Evidence*

The Tenant said that the Landlords would have known about the condition of the rental unit, if they had done a move-out condition inspection. She said:

> I'm disputing the Landlord's claim that the place was too filthy to move in. I cleaned the fridge, the cupboards, the stove – all clean. Regarding repairing and replacing the laminate flooring for the hole in the floor - if there was an agreement with my ex, I wasn't aware of it. As for the cat urine, they were outdoor cats and provided with cleaned litter on a regular basis. They died a long time before – one in early fall 2017, the other early 2018, so how could it smell like cat urine?
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> It was briefly listed in 2017 –maybe 3 or 4 showings for the property. [The Landlord] said my place was always clean.
> While they were showing the place, there was one instance where I was given short notice and didn't have the condition appropriate for showing.
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> Re other renovations – plumbing – I had no issue with it and the way it was. And they installed the kitchen island. I lived without it; surely they could have lived without one, too.

The Tenant said the Landlords are overstating the amount of work that needed to be done on the rental unit and that there was no reason why they could not have moved in and used it as a temporary residence, if that was their true intention.

The Tenant's Advocate said:

> I wanted to make a comment on the Two Month Notice for a Landlord's Use. They claimed they had to renovate it for six months. They did not move in. The renovations would have required giving a four month notice. I take exception to the fact that they were not aware of the condition of the unit. They purchased the building in 2007; they've owned it since then, and I find it hard to believe that they weren't aware of the condition.

Analysis

Section 49 of the Act states that a landlord may end a tenancy of a rental unit, if the landlord or a close family member intends in good faith to occupy the rental unit. Section 49 of the Act defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

The Two Month Notice was served on the Tenant prior to the Act being amended on May 17, 2018. As such, the version of the Act prior to May 17, 2018 applies to this situation. Before it was amended, section 51(2) of the Act stated:

> In addition to the amount payable under subsection (1), if
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> 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
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> (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,
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> 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 Tenant applied for a monetary order for 12 times the monthly rent; however, a tenant is eligible to apply for this amount if the Two Month Notice was served after section 51 of the Act was amended on May 17, 2018. That is not the situation before me; rather, the Tenant was deemed served with the Two Month Notice on March 27, 2018.

In this case, the Parties agreed that the Landlords never moved into the rental unit, although they said it was their intention to do so in June 2018. However, after cleaning and renovating the residential property for six months, they re-rented it. I find that the applicable version of section 51(2) does not refer to any extenuating circumstances being considered as a reason to not award compensation in this situation.

Therefore, pursuant to section 51(2) of the Act, as of March 27, 2018, I find that the Landlords breached the Act by failing to do what they set out that they would do in the Two Month Notice; I, therefore, find that the Tenant is entitled to double the monthly rent payable under the tenancy agreement or $805.00 x 2 = $1,610.00.

Pursuant to section 51(2) of the relevant version of the Act, I award the Tenant with a monetary order of $1,610.00.

Conclusion

The Landlord served the Tenant with a Two Month Notice, because they were going to move into the rental property. However, they did not move in and after cleaning and renovating it for over six months, they re-rented it. Pursuant to section 51(2) of the applicable version of the Act at the time, the Landlords are liable to pay the Tenant double the monthly rent, because they did not accomplish the stated purpose for ending the tenancy. The Tenant's claim for a monetary order is successful in the amount of $1,610.00.

I grant the Tenant a monetary order under section 67 of the Act from the Landlords in the amount of **$1,610.00**. This order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.
This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 17, 2019

Residential Tenancy Branch