



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing. Both Landlord were also present as was an agent for the Landlord who was also interpreting for one of the Landlords. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on September 1, 2014. Monthly rent at the end of the tenancy was \$1,495.00 and a security deposit of \$725.00 was paid at the outset of the tenancy.

The Tenant stated that she moved out on December 31, 2017, while the Landlord stated that she moved out on January 2, 2018. The parties agreed that the move-out inspection was conducted on January 2, 2018, which was the same day that the Tenant returned the keys.

The Tenant has applied for compensation in the amount of \$3,440.00. This includes the return of \$150.00 from the security deposit, \$300.00 as compensation for loss, and \$2,990.00 which is the equivalent of two months rent.

The Tenant stated that the tenancy ended through a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). A copy of the Two Month Notice, dated October 4, 2017, was submitted into evidence. The notice states the following as the reason for ending the tenancy:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The parties agreed that the Tenant did not pay December 2017 rent as compensation for receiving the Two Month Notice.

The Tenant stated that at the end of the tenancy she was not able to take her fridge and freezer with her. Due to this, she stated that she agreed that the Landlord could withhold \$150.00 from the security deposit to dispose of these two items. The Landlord submitted a copy of the letter dated January 2, 2018 in which the Tenant signed her permission for \$150.00 to be retained by the Landlord.

The Tenant testified that as she now believes she was wrongfully evicted, she has claimed the return of the \$150.00 she initially agreed could be kept. The Tenant confirmed that she received the remainder of the security deposit back. The Tenant has also claimed \$300.00 which she stated is the average cost for replacement of a used fridge and freezer since hers were disposed of.

The Landlord provided testimony that the Tenant signed written agreement to \$150.00 being retained for disposal of the fridge and freezer. Along with a copy of the signed agreement, which also included the Tenant's forwarding address, the Landlord submitted the receipt for disposal of the items.

The Tenant has also claimed two months of rent compensation which is equivalent to \$2,990.00. She stated that she accepted the Two Month Notice and moved out, but now has reason to believe that the renovations could have been completed with her tenancy still in place and that the unit did not need to be vacant.

The Tenant stated her position that although she believes that renovations were completed in the rental unit, she could have lived in the unit during the renovations. She also noted that no permits were obtained for the renovations. The Tenant stated that she would have been willing to make accommodations for the renovations to have been completed during the tenancy and understood that there would have been disruptions as a result.

The Tenant stated that people live through renovations such as the ones completed in the rental unit all of the time. She also noted that there were two bathrooms and therefore options for completing bathroom renovations while remaining in the rental unit. The Tenant further testified that there was room for storage at the rental unit, including a garage which would have worked to move household items out of the way while new flooring was being installed.

The Landlord testified that the rental unit was an older home that needed updating. They stated that this included replacing the kitchen cabinets, painting, replacing the floors throughout the unit, redoing the bathrooms and many other small renovations. They also noted that other repairs came up along the way such as a crack in the furnace that was detected after the work was started.

The Landlord stated that during the renovations, which took approximately four months to complete, there were periods of time when there was no access to the kitchen, no heat, no working bathroom and no flooring. The Landlord stated that although there were two bathrooms it was more convenient for the plumber to work on both at once.

The Landlords also noted that the kitchen cabinets were taken down right away and there was a delay with the new cabinets not being delivered for a few months after this which meant the kitchen was not useable for a significant period of time.

The Landlord submitted that no permits were required for the renovations that were completed in the rental unit.

The Landlords submitted into evidence receipts for repairs and renovations completed on the rental unit. This included receipts for flooring, painting, kitchen cabinets, kitchen counters, kitchen appliances, and other work receipts. The Landlords also submitted a written statement which includes in part the following:

The scope of the work was to update the 1963 era bathroom vanities, toilets, refinish bathtubs, kitchen cabinets, countertops, replacing carpet, appliances, and repainting rooms do not require permits.

It was not possible to update this house without it being vacant as it was challenging to coordinate labour to assist me and the renovations ended up requiring over four months to complete. [Reproduced as written]

The Tenant stated her position that she was evicted unnecessarily as she could have stayed in the rental unit during the renovations that were completed. The Tenant further noted that renovations such as these are often completed when a home is occupied. The Landlords stated their position that the renovations required vacant possession of the unit and that the Two Month Notice was therefore issued in good faith.

Analysis

Regarding the Tenant's claim for the return of \$150.00 from the security deposit, I refer to Section 38(4)(a) of the *Act* which states the following:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

The parties were in agreement that the Tenant provided written permission for the Landlord to retain \$150.00 from the security deposit, which was confirmed by the letter which was submitted into evidence. As such, I find that the Landlord was within their

rights to retain this amount as agreed upon and I decline to award the return of \$150.00. I do not find a provision under the *Act* for withdrawing written consent after it has been given or due to an application questioning the legitimacy of a notice to end tenancy.

As for the Tenant's claim for \$300.00 for replacement of the fridge and freezer left behind at the end of the tenancy, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the testimony and evidence of both parties, I find that the Tenant left the fridge and freezer behind when moving out and provided permission and money from the security deposit towards the disposal of these items. As such, I do not find evidence that the Landlords breached the *Act* and should compensate the Tenant as a result.

Even if it is found that the purpose of the Two Month Notice was not followed through on, as claimed by the Tenant, I do not find that this is the direct cause of the Tenant's loss of the fridge and freezer given that she made the decision to leave them behind. I decline to award the Tenant \$300.00 compensation as claimed.

Regarding the Tenant's application for two months of rent compensation, I refer to Section 51(2) which states the following:

- (2) In addition to the amount payable under subsection (1), 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.

I also note that this section of the *Act* was amended on May 17, 2018 and now provides for 12 months compensation. However, as this notice was served in 2017, prior to this change in legislation, it is the legislation at the time the notice was served that applies.

The Landlords provided testimony regarding the repairs completed in the rental unit and submitted receipts for the work completed. I am satisfied that the Landlords completed repairs and/or renovations in the rental unit. However, I do not find this to be the matter before me and instead that the matter is whether the rental unit needed to be vacant for these renovations to be completed.

While the Landlords claimed that it would have been “impossible” to complete the renovations without the rental unit being vacant, I am not satisfied that the repairs/renovations could not have been completed with the tenancy in place.

Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord’s Use of Property states the following regarding ending a tenancy for renovations or repairs:

A landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work.

While I accept that it was likely easier to coordinate and complete the work with the home vacant, I do not find that this is a valid reason for ending a tenancy as noted above.

Completing the renovations with the tenancy in place may have meant making accommodations such as working on one bathroom at a time or not taking down the kitchen cabinets until the new ones were delivered and ready to be installed. I appreciate that this may have resulted in a longer completion time.

However, ending a tenancy for renovations is not meant to make the renovation process easier for a landlord, but instead is reserved for situations where the landlord would be *unable* to complete the work without the rental unit vacant.

I find that kitchen, bathroom and floor renovations occur often with people continuing to reside in the home and completing the work around this. I also note that while the Landlord testified as to additional issues that came up, such as an issue with heating, this was not noticed until the renovations started and therefore was not a reason to end the tenancy with the Two Month Notice.

Residential Tenancy Policy Guideline 50: Compensation for Ending a Tenancy states the following regarding compensation under Section 51 of the *Act*:

A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:

- so extensive that the rental unit must be vacant in order for them to be carried out, and*
- the only manner to achieve that vacancy is by ending the tenancy. If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.*

As such, while the Tenant accepted the Two Month Notice at the time it was served, I find that the stated purpose of the notice was not followed through with. Although the Landlords completed repairs/renovations, I find that the rental unit did not need to be vacant as stated on the Two Month Notice and therefore the tenancy did not need to end.

Therefore, I find that Section 51(2) of the *Act* applies, and the Tenant is entitled to compensation in the amount of two months of rent. I award the Tenant compensation in the amount of \$2,990.00.

As the Tenant was partially successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is awarded a Monetary Order in the amount of \$3,090.00.

Conclusion

Pursuant to Sections 51, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$3,090.00** as outlined above. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as

possible. Should the Landlords 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: June 3, 2019

Residential Tenancy Branch