



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for a monetary order for damages or compensation pursuant to section 67.

Both parties attended the hearing. AA represented both the landlords ("landlord"). The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the application.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence, including text messages, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damages or compensation?

Background and Evidence

The parties agree on the following facts. The tenancy with this landlord began when the landlord purchased the property in October 2016. This tenant was already living in the rental unit under a previous tenancy agreement. At the time the new landlord took over, rent for this tenant was set at \$736.15 per month.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use on November 22, 2016 which was disputed by the tenant at a dispute resolution hearing. The reason for ending the tenancy cited was:

'the rental unit will be occupied by the landlord or the landlord's close family member.'

The Notice was upheld and an Order of Possession effective February 28, 2017 was issued. A copy of the arbitrator's decision was provided as evidence and the case number is noted on the cover page of this decision.

The tenant testified that there have been ongoing issues with the rental unit that started long before the named landlords purchased the property. The tenant alleges there was a leak in the roof of the rental unit, causing deteriorating ceiling tiles causing asbestos to spill into his rental unit from the ceiling. There were issues with the toilet frequently clogging that date back 63 months ago. The kitchen exhaust fan was unsafe and unclean and had been so for the past 63 months.

The tenant testified that the rental unit ownership changed in quick succession twice before this landlord purchase the property. When this landlord took ownership of the rental unit, the tenant notified the landlord's realtor of the unit's deficiencies and that he felt it was the duty of the landlord's realtor to ensure the landlord was aware of them. The tenant also provided an email directly to the landlord advising him of the issues on December 20, 2016, which he submitted as evidence.

When he was ordered to leave the property on February 28, 2017, the tenant didn't have new accommodations in place. He put his possessions into storage and hired movers to transport them to and from the storage facilities. As he was vacating the rental unit, a shelf that was improperly installed by a previous landlord gave way, causing a dryer to fall on him, causing an injury to his wrist and thumb.

The tenant filed the following monetary order worksheet as evidence:

Doc#	Receipt/ Estimate From	For	\$Amount
1	160305RentIncrease; 2mos.rent@\$736.15	S. 51 Compensation	\$1,472.30
2	170313-0504Sun-CoastSelfStorage; 2receipts: \$245.55 and \$19.65	Unnecessary storage costs	\$265.20
3	170320ChaseEdwards-Troy's canopy pickup; Moving out of suite into self-storage	Unnecessary move out costs	\$100.00
4	170321DryerFellOnMe; crushed wrist, lasting right thumb injury; 24 mos. to now x \$100	Ongoing physical pain	\$2,400.00
5	170504GibsonsMovers, moving from storage and 681 shed to new apartment	Unnecessary move in costs	\$350.00
6	151012-160722CeilingLeak-AsbestosDust onto carpeted areas; .67 x \$715.40 x 9 mos.	Ceiling Leak-Asbestos Dust	\$4,292.40

7	160722-170323Asbestos Untreated in Bedroom; slept in L ivrm; .25 x \$736.15 x 7 mos.	Asbestos--bedding and carpet	\$1,288.26
8	161028-170323PatchedCeiling still leaking; Roof unrepaired; .25 x \$736.15 x 4 mos.	Ceiling leaks into Livrm	\$736.15
9	160722Lecy-RoyFinalOffer-Furnishings \$800 plus kneeling chair omitted from list \$125	Property loss due to asbestos	\$925.00
10	111201-170323Persistent Toilet Clogging Avg 6 times a mo. over 63 mos. x \$25 (1/2 of minimum plumber's rate)	Tenant's time clearing toilet	\$9,450.00
11	111201-170323Inoperable, unsafe, unclean, unscreened kitchen exhaust fan affects entire suite except bathrm; 63 mos. x \$125 (Avg rent over 63 mos was \$700.15 a month)	Loss of value; health impacts	\$7,875.00
		TOTAL:	\$29,153.91

The landlord provided the following testimony. When he served the tenant with the Two Month Notice to End Tenancy for Landlord's Use in November 2016 he fully intended to move into the home with his family. Unforeseen circumstances prevented him from being able to fully move in with his family and he now maintains a home office in part of the home and rents the two other units in the building as rentals.

The landlord maintains that the issues presented by the tenant are related to past owners of the property and that he was not made aware of the claims until after he served the tenant with the 2 Month Notice.

Analysis

- Compensation pursuant to section 51

Section 51(2) of the *Act* sets out financial compensation for a tenant when a landlord does not take reasonable steps to accomplish the purpose for which the tenancy was ended or fails to use the rental unit for the purpose the notice was given after the effective date of the notice. The Residential Tenancy Branch's Guideline (PG-50) '*Compensation for Ending a Tenancy*' provides guidance to arbitrators, landlords and tenants on compensation for ending a tenancy.

PG-50 is clear in that the arbitrator must consider whether reasonable steps were taken to accomplish the purpose of ending of the tenancy, whether or not the reason for ending the tenancy was issued in good faith. Below is the key section of the Guideline:

- Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

The landlord acknowledged in his testimony that he and his family did not occupy the rental unit immediately after taking possession of the rental unit. I find that steps have not been taken by the landlord, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy. The tenant is entitled to compensation provided for in section 51(2) of the *Act*.

In 2016, when the landlord served Notice, section 51(1) of the *Act* required the landlord to compensate a tenant an amount equal to double the rent payable under the tenancy agreement if the landlord has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. As the tenant was paying \$736.15 per month rent, I award the tenant double that amount or **\$1,472.30** in compensation.

Tenant's additional claims

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. Under section 67 of the *Residential Tenancy Act*, **if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement**, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

(emphasis added)

The tenant's evidence and testimony shows the leaks in the roof and asbestos were present in the rental unit before the named landlord in this application purchased it. The issues involving the clogged toilet, and the inoperable kitchen exhaust fan were likewise pre-existing conditions that this landlord only became aware of on December 20, 2016 when the tenant sent him the email. The tenant did not provide any testimony or documentary evidence to prove he notified the landlord of these issues any time before December 20th. I note that December 20th is approximately one month *after* the tenant was served with the Notice to End Tenancy.

From the evidence, it appears the tenancy agreement only existed between the parties from the time this landlord purchased the property in October 2016 to the effective date of the Order of Possession of February 2017. I find the tenant has not successfully proven, on a balance of probabilities, that this landlord has violated any part of the *Act*, legislation or tenancy agreement. This landlord cannot be held liable for conditions that were present in the rental unit prior to him becoming the landlord. Referring to the tenant's monetary order worksheet, parts 6, 7, 8, 9, 10 and 11 regarding problems with the rental unit that were in existence before this landlord purchased it are dismissed.

The tenant seeks compensation for storage costs, move out costs and move in costs associated to the end of the tenancy. The tenant was ordered to vacate the rental unit pursuant to an Order of Possession lawfully granted by an arbitrator of the Residential Tenancy Branch. As such, the tenant has failed to show an instance of the landlord failing to comply with the *Act*, regulations or tenancy agreement. Parts 2, 3, and 5 of the tenant's claim on the monetary order worksheet are dismissed.

Lastly, the tenant seeks compensation for an injury to his wrist and thumb caused by an incorrectly installed shelf holding a dryer. This landlord was not notified of a discrepancy with the shelf that was installed by a previous landlord and therefore had no opportunity to remedy it. The tenant has failed to prove his damage or loss results from this landlord not complying with the *Act*, regulations or tenancy agreement. Part 4 of the tenant's claim on the monetary order worksheet is dismissed.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,472.30**. 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 24, 2019