



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony and also represented the other tenant. Both landlords also attended, represented at the hearing by an Agent who also gave affirmed testimony. The landlords were also accompanied by an interpreter who was affirmed to well and truly interpret the proceedings from the English language to the landlords' Native language and from the landlords' Native language to the English language to the best of the interpreter's skill and ability. The landlords' agent is the landlords' son.

The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation required under Section 51 of the *Residential Tenancy Act* for the landlords' failure to use the rental unit for the purpose contained in a notice to end the tenancy?

Background and Evidence

The tenant testified that this tenancy began on a fixed term basis on September 1, 2012 and reverted to a month to month tenancy after a couple of years, which ultimately ended on July 31, 2018. A written tenancy agreement was signed by the parties, but a copy has not been provided as evidence for this hearing. Rent in the amount of \$1,563.80 was payable at the end of the tenancy, on the 1st day of each month and there are no rental arrears. The landlords collected a security deposit from the tenants, all of which has been returned to the tenants. The rental unit is the upper floor of a 2-level house, and the landlords resided in the basement suite.

The tenants have provided a Monetary Order Worksheet setting out the following claims as against the landlords, totalling \$18,765.60:

- \$1,563.80 for return of rent for July, 2018; and
- \$1,563.80 for each of 12 months as compensation under Section 51(2) of the *Residential Tenancy Act*.

The tenant clarified that the landlords have returned the \$1,563.80 for July, 2018 rent and that portion of the application is withdrawn.

The landlords had served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property stating that the landlord or a close family member would occupy the rental unit. The tenants disputed it, and the landlords were awarded an Order of Possession at Arbitration. The tenant testified that the landlords misled the Arbitrator stating that there were structural issues. Also 15 days after the tenancy ended would be a reasonable time for the landlords to occupy the rental unit, but instead, the landlords renovated during the months of August, September and October, and moved in during the first week of October, 2018. Such renovations should have required giving 4 months notice to the tenants.

The landlords then went to Hong Kong for 6 months, as they did annually, leaving in December, 2018 and returning in May, 2019, and didn't stay in the rental unit for 6 months. The tenants live in the neighbourhood next to the rental unit, and the tenants' kids go to school there. The windows were closed, blinds drawn, and belongings were on the front porch. The landlords contend that they didn't re-rent so are still occupying, and that they had no ulterior motive, but the purpose for ending the tenancy was to renovate prior to occupying it. The tenant submits that the landlords did not take steps to accomplish the purpose for ending the tenancy; a landlord cannot renovate or repair

instead, and Policy Guideline 50 states that the stated purpose must be accomplished within a reasonable time.

The tenants cancelled family plans and had resided in the rental unit for 6 years. Four month's notice would have given the tenants more time to get moved and find a new home. It caused a lot of stress.

The landlord's agent testified that the landlords resided in the basement suite for about 10 years and didn't know the condition of the rental unit until the beginning of August, 2018. As such, they didn't realize that the condition was not good for the elderly landlords who are in their 80s. The landlord's agent spent time helping them acquire furniture for the living room and assemble it. Then they discovered that the bathtub was too slippery and had to replace it. The stairs to the laundry room were dangerous, so a handrail was installed, and another handrail was extended. They also cut along the kitchen island, and some leaking had to be repaired. That's what they found after they obtained possession of the rental unit, and were not aware that such renovations were needed until then. There was no intention of misleading the Arbitrator, and the renovations conducted were not major renovations.

The landlords still reside in the rental unit, all of their belongings are there, and it is their only home.

Analysis

The *Residential Tenancy Act* states that where a landlord doesn't use a rental unit commencing with a reasonable time after obtaining possession of a rental unit, for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, and continuing for at least 6 months, the landlord must pay the tenant the equivalent of 12 month's rent. The tenants' position is that the landlords did not use the property for that purpose but instead renovated, and therefore ought to have given a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit under Section 49 (6) of the *Act*.

The tenants also rely on Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy, which contains an example:

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

“It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.”

I agree that in such a scenario 15 days would be sufficient, but that is not the scenario in this case. I accept that a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit would have given the tenants more time to find suitable accommodation, and that the tenants were inconvenienced by being given only 2 months. However, I am not satisfied that the landlords have breached any section of the *Act*. The landlords gave sufficient notice for use of the rental property for their own purposes, and even though some renovations were completed, it was as soon as the circumstances permitted it. I am not satisfied that the tenants have established that the landlords did not have good faith intent to do so. The tenants’ application is dismissed in its entirety.

Conclusion

For the reasons set out above, the tenants’ application is hereby dismissed.

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: July 04, 2019

Residential Tenancy Branch