



Dispute Resolution Services

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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* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord, the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent daughter had permission to speak on his behalf.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application. The landlord's agent confirmed that the landlord did not submit any evidence for this hearing. This hearing lasted approximately 21 minutes.

The tenant confirmed receipt of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated October 6, 2018 ("4 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 4 Month Notice.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on May 1, 2014 and ended on February 6, 2019. Monthly rent of \$1,040.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord returned the full deposit to the tenant. A written tenancy agreement was signed by both parties. The rental unit is the upper portion of a house, with a separate basement suite on the level below.

Both parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 4 Month Notice, and received one month rent free compensation. A copy of the 4 Month Notice was provided for this hearing. The effective move-out date on the 4 Month Notice is February 6, 2019. The reasons indicated on the 4 Month Notice are:

- *perform renovations or repairs that are so extensive that the rental unit must be vacant; and*
- *no permits or approvals are required by law to do this work.*

The tenant seeks compensation under section 51(2) of the Act for twelve months of rent reimbursement of \$1,000.00, totaling \$12,000.00. The tenant claims that because the landlord did not use the rental unit for the purpose on the 4 Month Notice, she is entitled to compensation. The landlord disputes the tenant's application.

The tenant stated that the landlord did not use the 4 Month Notice for the reason indicated on it. She claimed that the landlord did not perform any renovation or repairs and simply re-rented the unit within a couple of months after the tenant vacated. She said that the tenants living in the basement during her tenancy never moved out, despite all the claims that the landlord had for repairing the plumbing in the house. The tenant maintained that the landlord did not want her living here, and she received a text message from an unknown number indicating that the upkeep was too much for the property, so she had to move out.

The landlord disputes the tenant's application. The landlord's agent claimed that the tenant was issued the 4 Month Notice because the laundry in the tenant's unit kept

flooding the downstairs basement suite, so repairs had to be done to the plumbing. She maintained that the repairs would cost \$15,000.00 to \$20,000.00 and the landlord could not afford it. She stated that the landlord's intention was always to demolish the house, rebuild a new house, and obtain a mortgage in order to do so. She said that the landlord was declined for the mortgage, but was still waiting to obtain one.

The landlord's agent confirmed that the landlord re-rented the upper unit to new tenants as of mid-May 2019, and the basement unit as of mid-June 2019, for a total of \$1,800.00 per month in rent for the whole house. She stated that the tenancy is still ongoing on a month-to-month basis and she told the new tenants that they were okay for about a year. She maintained that she advised the new tenants that there was a flooding problem in the basement but they still wanted to move in. She said that the basement tenant that was residing there during the tenant's tenancy moved out about one month after the tenant did.

Analysis

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 4 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (2) 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.

The following facts are undisputed. The tenant vacated the rental unit on February 9, 2019, pursuant to the 4 Month Notice, which was issued by the landlord to renovate or repair the rental unit, requiring it to be vacant. The landlord re-rented the upper rental unit as of mid-May, 2019, less than 6 months after the effective date of the 4 Month

Notice of February 6, 2019. The new tenants continue to reside in the rental unit. The landlord did not renovate or repair the rental unit and actually intend to demolish it.

Section 51(3) of the *Act* states the following:

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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.

I find that the landlord failed to show extenuating circumstances prevented him from using the rental unit for the purpose in the 4 Month Notice. The landlord's agent indicated that the landlord could not afford to renovate or repair the rental unit. Yet, this was the reason the landlord issued the 4 Month Notice and the landlord should have determined these costs prior to issuing the notice, considering he indicated no permits or approvals were required. The landlord's agent indicated that the landlord is still waiting for a demolition permit to demolish the unit and build a new house. This was apparently always the landlord's intention, as per the landlord's agent's testimony. Yet, this was not even the original reason given to the tenant on the 4 Month Notice, as this is a different reason on the notice.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the landlord did not renovate or repair the rental unit but rather re-rented the unit to new tenants after the effective date of February 6, 2019.

Accordingly, I find that the tenant is entitled to twelve times the monthly rent of \$1,040.00, as compensation under section 51 of the *Act*, which totals \$12,480.00, from the landlord.

Although the tenant only applied for \$12,000.00, based on a rent of \$1,000.00, she said that she only did so because she did not think she could prove that she paid a rent of \$1,040.00 each month. However, the landlord's agent confirmed during the hearing that the rent was \$1,040.00 per month, at the end of this tenancy, not \$1,000.00. Therefore, I find that the tenant is entitled to compensation based on the correct rent of \$1,040.00,

which the tenant paid at the end of this tenancy, not \$1,000.00, as per the 4 Month Notice and section 51 of the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour in the total amount of \$12,480.00, against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: August 15, 2019

Residential Tenancy Branch