Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT

Introduction

A hearing was convened on August 27, 2019 in response to the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement.

The Tenant stated that on May 17, 2019 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On May 15, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that she is not sure, but she believes these documents were served to the Landlord with the Dispute Resolution Package. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 22, 2019 the Tenant submitted an Amendment to the Application for Dispute Resolution, in which she provides an amended service address for the Landlord and in which she indicates she is withdrawing her application to cancel a Four Month Notice to End Tenancy. I note that the Tenant did not apply to cancel a Four Month Notice to End Tenancy when she filed this Application for Dispute Resolution.

The Tenant stated that she personally served the Amendment to the Application for Dispute Resolution to the Landlord, although she cannot recall the date of service. Legal Counsel for the Landlord stated that the Amendment was received by the Landlord, via registered mail. As the Landlord acknowledges receiving the Amendment, I find that it was sufficiently served to the Landlord.

On August 19, 2019 the Landlord submitted of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was served to the

Tenant, via registered mail, on August 19, 2019. The Tenant stated that she found this evidence posted on her door on August 19, 2019. As the Tenant acknowledged receiving this evidence, I find that it was sufficiently served to the Landlord and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord, the Tenant, and the Paralegal each affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter #1

The hearing on August 27, 2019 was adjourned, as there was insufficient time to conclude the hearing on that date. The hearing was reconvened on November 15, 2019 and was concluded on that date.

The parties were advised that any documents submitted to the Residential Tenancy Branch after August 27, 2019 will not be considered, as my interim decision informed both parties that no additional evidence could be submitted.

Preliminary Matter #2

Approximately 29 minutes after the hearing commenced on August 27, 2019 Legal Counsel for the Landlord declared that she had to leave the teleconference due to an emergency and she anticipated the Paralegal would be able to assist the Landlord during the remainder of the proceedings. Legal Counsel then abruptly exited the teleconference without requesting an adjournment. The hearing proceeded in her absence.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act,* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began many years ago;
- there is no written tenancy agreement;
- when the tenancy ended the rent was $531.00 per month;
- rent was due by the first day of each month;
- the Tenant was served with a Four Month Notice to End Tenancy, which declared that she must vacate the rental unit by October 31, 2018;
- there was a hearing in regard to the aforementioned Four Month Notice to End Tenancy on September 04, 2018; and
- the Tenant vacated the rental unit on October 31, 2018.

The Tenant submitted a copy of the decision from the hearing on September 04, 2018. In that decision the Arbitrator dismissed two applications to cancel a Four Month Notice to End Tenancy, one of which was served to the Tenant for this rental unit. The Arbitrator also granted the Landlord an Order of Possession, effective October 31, 2018.

Neither party submitted a copy of the Four Month Notice to End Tenancy that was the subject of the hearing on September 04, 2018 nor did they have one with them at the time of the hearing on August 27, 2018. The parties agree however that the reason for ending the tenancy that was cited on the Notice to End Tenancy was that Landlord intended to convert the rental unit to a non-residential use and that the Landlord has all necessary permits and approvals to do so.

The Tenant is seeking compensation of $6,372.00 because she alleges the rental unit is not being used for the purpose cited on the Four Month Notice to End Tenancy.

The Landlord stated that she served the Four Month Notice to End Tenancy because she intended to convert the residential complex into a “boutique hotel”. The Tenant stated that she had been told that the Landlord intended to convert the residential complex into a “boutique hotel”.

At the hearing in August the Landlord stated that:

- after the tenancy ended, which she estimated to be approximately 11 months ago, the rental unit was cleaned;
- in November of 2018 she began demolishing the rental unit, as well as other areas in the complex;
- she is still in the process of demolishing some areas of the complex;

- in November of 2018 she had not yet hired a contractor for the renovations;
- there was a delay starting the renovations was due, in part, to the unavailability of contractors in her area;
- she was prepared to begin renovations three months ago but there was a “glitch” with the drawings so renovations were delayed;
- between May and July of 2019 she was attempting to identify a contractor;
- contractors are busy in her community, but she has found a contractor which she anticipates will start renovating the complex sometime in the next three weeks; and
- the entire complex is currently empty.

At the hearing in August the Tenant stated that she has driven by the rental unit and noticed lights on and curtains in the window of the rental unit, which causes her to believe that someone is living there. The Landlord stated that there are curtains on the windows and the lights are sometimes left on, but that nobody is living in the rental unit.

At the hearing in August the Tenant stated that she has not been back to the rental unit since she vacated it.

Three building permits were submitted in evidence:

- a permit dated May 24, 2017 for the purposes of “repair commercial” for unit 1;
- a permit dated May 30, 2018 to “repair commercial, which appears to be for the entire complex, rather than just unit 1; and
- a permit dated July 05, 2019 to “Renewal: repair commercial”.

The Landlord and the Tenant agree that on May 23, 2017 the Landlord advertised four newly renovated suites in this complex. The parties agree there were no newly renovated suites in the complex at that time.

At the hearing in August the Tenant asked why the Landlord would renovate the rental unit for potential new tenants, given that she had told her existing tenants that she could not afford to renovate their units. The Landlord responded that she was simply “testing the market” and she would have renovated the units for re-rent if the renovations were worth the cost of renovating.

At the hearing in August the Tenant stated that at a previous dispute resolution proceeding the Landlord told the Arbitrator that she had the necessary funding to convert the rental unit and complex into a “boutique hotel”.

At the hearing in August the Landlord stated that she thinks she had some funding secured at the time of the previous dispute resolution proceeding; funding has been an issue and, to some degree, funding has contributed to the delay in proceeding with the project; she needed to secure additional funding; she has been working to obtain additional funding; and she was able to secure additional funding in April of 2019.

Prior to the conclusion of the hearing on August 27, 2019, the Tenant declared that she had additional submissions to make regarding funding. At the hearing on November 17, 2019 the Tenant did not make additional submissions regarding funding. Rather, the Tenant repeatedly attempted to raised issues that had already been discussed in the August hearing. The Tenant was not permitted to discuss issues that had been discussed in the previous hearing.

For example, at the hearing in November of 2019, the Tenant stated that she had been told people are living in the rental unit. The Landlord stated, again, that nobody is living in the unit and that nobody has lived in the unit since the Tenant vacated.

The Landlord stated that since the hearing in August construction to the fire exit stairway has commenced, however no construction in the actual unit has commenced. She stated that bathrooms, flooring, and walls have been demolished. The Tenant has not returned to the rental unit, so she does not know if work has been completed.

In her final submission the Tenant declared that she simply knows the conversion of the rental unit was not completed in the time allowed by the *Act.* In her final submission Legal Counsel for the Landlord argued that the Landlord is continuing to convert the rental unit and that there is no time line in the *Act* for competing the renovations.

The Tenant is seeking compensation of $612.40 for moving costs. She contends that she is entitled to this compensation because she lives alone; she is elderly; and she had to pay someone to assister with her move. She acknowledged that she did not have to pay for her last month's rent, in compensation for being served with the Four Month Notice to End Tenancy.

Analysis

Section 49(6)(f) of the *Act* authorizes a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

On the basis of the undisputed evidence I find that the Tenant was served with a Four Month Notice to End Tenancy, served pursuant to section 49(6)(f) of the *Act*, and that she vacated the rental unit on October 31, 2018 on the basis of that Notice.

On the basis of the undisputed evidence I find that the Tenant served the Four Month Notice to End Tenancy because she intended to convert the rental unit and other parts of the complex into a “boutique hotel”.

Section 51(2) of the *Act* stipulates that a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if 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 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.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that shortly after the tenancy ended the Landlord cleaned the rental unit and she began demolishing the rental unit and other areas of the complex. On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that some areas of the complex are still undergoing demolishing and construction to a stairwell has commenced.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the renovations to the unit and complex were delayed, in part, to difficulties the Landlord experienced coordinating a start time with the contractors she plans to use to complete the renovations. The delay in construction appears to be, in part, related to a “glitch” with the drawings and, in part, with the availability of the contractors.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the renovations in the complex have commenced but are only in their early stages.

Regardless of the delays in the renovations, I am satisfied that shortly after the tenancy ended the Landlord took steps to convert the rental unit and complex to a “boutique hotel”. Specifically, I find that she cleaned the rental unit and she began demolishing the unit and complex for the purposes of the conversion.

Regardless of the delays in the renovations, I am also satisfied that the Landlord is still taking steps to convert the rental unit and complex into a “boutique hotel”. Specifically, I find that areas of the complex have been demolished and some construction has commenced.

In concluding that the Landlord is still taking steps to convert the rental unit and complex into a “boutique hotel”, I was influenced by the building permits submitted in evidence. I find that the renewal permit, dated July 05, 2019, supports my conclusion that the Landlord is still taking steps to convert the rental unit and complex into a “boutique hotel”.

In adjudicating this matter, I have placed no weight on the Tenant’s belief that someone is living in the rental unit, as there is no evidence to support that supposition or to refute the Landlord’s testimony that nobody is living in the rental unit. I find that curtains in the window and lights on do not establish that someone is living in the unit.

In adjudicating this matter, I have placed no weight on the undisputed fact that on May 23, 2017 the Landlord advertised four newly renovated suites in this complex, although no such units were available. I find that the Landlord’s explanation that she was testing the economic feasibility of renovating for the purpose of re-renting the existing units to be a reasonable explanation for this unusual advertisement. Regardless of the explanation, I find that the advertisement does not assist me in determining whether the Landlord is pursuing her most recent plan of converting the unit and complex into a “boutique hotel”.

In adjudicating this matter, I have placed no weight on the issue of funding. Even if the Landlord had all of the funding for the proposed renovations, the availability of contractors and building permit issues are reasonable reasons for the delay.

As the Landlord began taking steps to convert the rental unit and complex to a boutique hotel shortly after the unit was vacated on October 31, 2018 and she is continuing to take steps towards that goal, I find that the Tenant is not entitled to compensation pursuant to section 51(2) of the *Act.* I therefore dismiss the Tenant’s application for $6,372.00.

For clarity, the section 51(2) of the *Act* requires a landlord to take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. The *Act* does **not** require a landlord to complete a renovation in any specific time period, as reasonable time periods for completion would obviously be

dependent on the scope of the renovation. It would be entirely unrealistic, for example, for a large apartment building to be demolished and renovated in six months.

I note that there is a reference to a six month time period in section 51(2) of the *Act.* This does not require a landlord to complete a renovation in six months. This time frame is typically applied to situations where a landlord ends a tenancy because the landlord intends to move into the rental unit. When a landlord moves into a rental unit, section 51(2) of the *Act* demands that the landlord live in the rental unit for at least six months.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant only if the tenant has suffered a loss because the landlord has breached the *Act*. As the Tenant has submitted insufficient evidence to establish that the Landlord breached the *Act* in regard to the Four Month Notice to End Tenancy, I find that the Tenant is not entitled to recover the costs of moving. The Tenant did not pay rent for the last month, in compensation for being served with a Four Month Notice to End Tenancy. This benefit is intended to compensation tenants for the cost and inconvenience of moving.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: November 17, 2019

Residential Tenancy Branch