Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MCDT, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for $16,800 representing 12 times the amount of monthly rent, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This application as heard at two separate hearings, the first on October 21, 2019 and the second on December 6, 2019. Both parties attended both hearing and were represented by agents. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

In my interim decision following the October 21, 2019 hearing, I found that all parties have been served with the required evidentiary material in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to:

1) a monetary order for $16,800 equal to 12 times the monthly rent; and
2) recover his filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the former owner of the rental unit entered into a written tenancy agreement starting November 1, 2011. The rental unit is a lower suite in a two-suite single-detached home. At the end of the tenancy, the monthly rent was $1,400 and was payable on the first of each month. The tenant paid the former owner of the rental unit a security deposit of $700. The landlord returned this deposit at the end of the tenancy.

On March 15, 2019, the former owner of the rental unit served the tenant a two month notice to end tenancy for landlord's use of the property (the "**Notice**"). It specified the reason for ending the tenancy as:

> All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a family member intends in good faith to occupy the rental unit.

The tenant vacated the rental unit on May 31, 2019. The landlord took possession of the rental unit on June 1, 2019.

The tenant testified that the landlord did not occupy the rental unit within a reasonable period of time following the effective date of the Notice, or at all. He testified that the landlord instead made renovations to the rental unit and attempted to re-rent it.

The tenant also alleged that the landlord did not act in good faith when issuing the Notice, he argued that the landlord did not intend to occupy the rental unit. In support of this assertion, he testified that, on May 31, 2019, the landlord attempted to increase the rent of the tenant living in the suite above his in the residential property (the "**Upper Suite**") by an amount in excess of what was permitted by the Act, and then, when this tenant refused to agree to the increase, issued a two month notice of eviction stating his family would occupy the rental unit.

The Upper Suite tenant testified to these facts at the hearing and submitted a copy of her two-month notice, and an email from the landlord to her stating that he intended to use "the entire house for [his] family".

The Upper Suite tenant testified that one or two weeks following this email the landlord and her in person if she would consider staying in the Upper Suite, but the tenant testified that she had already arranged to move elsewhere.

The tenant argued that the landlord intended to use the rental unit as a short-term rental, as opposed to the occupying it himself. He testified that the landlord placed the rental unit up for rent on craigslist. He submitted a copy of an email exchange between himself and that landlord, where he posed as a prospective renter of the rental unit. In these emails, he sought to rent the rental unit for 6 months but was told by the landlord that it was only available for rent for two weeks (from July 13, 2019 to the end of July 2019) as the landlord was travelling.

The landlord testified that the reason he did not move into the rental unit was because within days of his taking possession of it, a large portion of it was flooded. He testified that the sump pump in the bathroom backed up and flooded one bedroom, the laundry room, the kitchen and the bathroom of the rental unit with black sewer water.

The landlord testified that he filed an insurance claim on June 4, 2019 and provided a copy of the cover sheet of the claim from his insurer. He also submitted a photograph of the bathroom after the flooding occurring, which show a large hole in the floor of a finished bathroom. He also submitted a photograph of the bathroom after it was remediated, which shows the bathroom stripped down to its floorboards which were stained black.

The insurance company arranged for a remediation company to attend the rental unit and remediate the damage. The landlord called the project manager of the remediation company ("**LH**") to testify.

LH testified that his company performed remediation services on the rental unit starting in early June 2019 for two or three weeks. He testified that the rental unit was partially flooded, and that black sewer water had spread to roughly 2/3^{rds} of the rental unit. He testified that the water had been there "two days, maybe a week" before he arrived to remediate. He testified that there was no mold to remediate, but that flooring had to be removed and fans had to be run to dry the unit out.

LH testified that the landlord had "cashed out" with the insurance company, that is, the landlord took the cash value of the damages and would arrange to have the damage repaired himself, rather than allow the insurer to hire a contractor to repair the damage once the remediation was done.

The tenant testified that while the remediation work was occurring, the landlord installed two doors in the rental unit, one in the interior of the rental unit, and the other on the exterior, creating another entrance into the rental unit.

The landlord admitted that he did this, and stated he installed the interior door to separate the damaged and undamaged areas of the rental unit. He testified that he installed the exterior door for “safety” reasons to provide access into the back room of the rental unit.

The tenant testified that he discovered these doors being installed after seeing two door frames on the front lawn of the rental unit when he passed by. He testified that he did not see any fencing around the rental property, so he assumed the landlord was making a non-permitted renovation of the rental unit. He testified he contacted the local municipal government to report this.

The landlord testified that he did not have permits to install the doors or do other repair work on the rental unit, and that the city inspector issued a stop work order on August 22, 2019, following two visits from city inspectors on June 18, 2019 and July 11, 2019.

The landlord testified that he applied for permits in October 2019 but has not yet received them. As such, the rental unit has not yet been repaired, and remains unoccupied.

The landlord testified that he attempted to rent out the undamaged portion of the rental unit on craigslist in an effort to recoup some of the repair costs, but that he was unable to. He testified that it was not his intention to rent out the rental unit for any term other than a short-term basis.

Analysis

Section 51 of the Act states:

> **Tenant's compensation: section 49 notice**
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> (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.
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> (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
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> (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.

The stated purpose for ending the tenancy on the Notice is for the purchaser to occupy the rental unit. Section 51(2) of the Act does not include any good faith requirement or require that the intentions of a party be considered at the time a notice is issued, rather it looks at what actually occurred.

Whether or not the Notice was issued in good faith, or whether the landlord intended in good faith to occupy the rental unit, would have been a relevant factor to consider if the tenant had applied to cancel the Notice prior to his vacating the rental unit, pursuant to section 49(8).

As such, it is not necessary for me to consider the intentions of the landlord at the time the Notice was issued. I need only consider the actions of landlord following the effective date of the Notice.

It is common ground between the parties that the landlord did not occupy the rental unit for residential purposes within a reasonable period after the effective date of the Notice, or at all. Indeed, due to the stop work order, the landlord is remains unable to move into the rental unit.

As such, the landlord has failed to comply with the requires of section 51(2). Therefore, in order to avoid the 12 times monthly rent penalty, the landlord must demonstrate that his circumstances fit within the exceptions of 51(3).

Policy Guideline 50 discusses the issue of extenuating circumstances:

> **E. EXTENUATING CIRCUMSTANCES**
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> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
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> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
> - A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
> - A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.
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> The following are probably not extenuating circumstances:
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> - A landlord ends a tenancy to occupy a rental unit and they change their mind.
> - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

I accept the landlord's evidence that within days of his taking possession of the rental unit the sump pump failed and flooded a large percentage of the rental unit. I accept LH's testimony that the rental unit was exposed to black sewer water which took two or three weeks to remediate. Based on this, I find that it would be unreasonable to expect that the landlord to occupy the rental unit for residential purposes while this remediation was occurring.

Additionally, I find that further repairs were needed in the rental unit to bring it back to the state it was prior to the flood, including the replacement of the flooring in a large percentage of the rental unit. I find that it is unreasonable to expect the landlord to move back into the rental unit while these repairs remain undone. I accept the landlord's evidence that he is unable to complete these repairs due to the stop work order. As such, it is not unreasonable for him to have not yet moved into the rental unit.

I find that the reason the landlord did not occupy the rental unit for residential purposes is due to the fact that the flood damage has not yet been repaired. I do not find that the

reason he failed to occupy the rental unit for residential purposes was, as alleged by the tenant, so that he could perform renovations such as installing the doors, or so that he could re-rent the rental unit on craigslist.

As such, I find that it would be unreasonable and unjust to require that the landlord pay the tenant an amount equal to 12 times the month of monthly rent. I find that it is through no fault of his own that the landlord has failed to occupy the rental unit for residential purposes since the tenancy ended.

As such, I find that extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and 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.

Accordingly, I dismiss the tenant's application, without leave to reapply.

As the tenant was unsuccessful, I decline to order that the landlord reimburse him the filing fee.

Conclusion

I dismiss the tenant's application in its entirety, 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: December 16, 2019

Residential Tenancy Branch