



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

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;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 65 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Both parties confirmed that they had no objections to me considering both parties' evidence, despite the fact that it was served and received late for both parties.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated December 14, 2017 ("2 Month Notice"). Both parties agreed that the effective move-out date on the notice was February 28, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2013 and ended on March 1, 2018. Monthly rent of \$985.00 was payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant and the landlord returned the deposit to the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant seeks a monetary order of \$8,213.72 plus the \$100.00 filing fee.

The tenant seeks compensation under section 51(2) of the *Act* for double the monthly rent of \$985.00, totalling \$1,970.00, plus recovery of the \$100.00 application filing fee. The tenant also seeks moving expenses of \$495.00 and \$416.75, storage expenses of \$183.23, \$171.55, and \$351.18, first month's rent for her new rental unit of \$3,000.00, the security deposit for her new rental unit of \$1,500.00, and lawyer's expenses of \$126.01 to determine whether to file this application.

The tenant claimed that she moved out pursuant to the 2 Month Notice. A copy of the second page of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice was:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant stated that the landlord did not issue the 2 Month Notice in good faith. She agreed that she voluntarily settled her previous Residential Tenancy Branch ("RTB") application to dispute the 2 Month Notice but said she was forced and bullied by the

landlord. The file number for that hearing appear on the front page of this decision. She maintained that the occupants living in the unit above hers were very loud, so she had to vacate. She stated that she offered a mutual agreement to end her tenancy, but the landlord did not sign it.

The tenant said that the law was changed by the RTB two months after she vacated. She referred to Residential Tenancy Policy Guideline 2B, when she claimed that it was highly unlikely that her tenancy needed to end, because the repairs did not warrant an end to her tenancy. She maintained that the landlord posted an ad for re-rental 16 days after she moved out, and the rental unit was not vacant for a long period of time. She explained that she believed the landlord did renovate and repair the rental unit but said it did not have to be vacant. The tenant said that she requested the landlord to complete the repairs that were eventually done, before she moved out.

The tenant testified that she was seeking her moving, storage and new unit expenses because she now pays three times the rent now than she did before, it was an unnecessary end to her tenancy, she suffered financial hardship, and she was homeless for two months with her child and dog.

The landlord disputes the tenant's entire application. She said that she did not bully or force the tenant to move out. She stated that the tenant did not ask the landlord to stay longer, so she did not offer. She maintained that the tenant could have stayed longer if she had told the landlord she had no home. She claimed that the tenant agreed to move out at the last RTB hearing.

The landlord confirmed that extensive renovations were done inside the rental unit, to the two bathrooms, flooring, and other areas. She pointed to a drawing she submitted, as well as photographs of the work done. She maintained that the tenant had a lot of belongings in the unit which could not remain, during the renovations. She said that when a previous leak was fixed inside the rental unit, the tenant was asthmatic and had a number of sensitivities. She maintained that the renovations were much more extensive this time, so the tenant could not remain in the unit, and it had to be vacant. She confirmed that she spent over \$10,000.00, not including labour costs, to renovate the rental unit after the tenant vacated.

Analysis

Section 49(6) of the *Act* reads, in part, as follows:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;*
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;*

Section 51(2) of the Act established a provision whereby a tenant was entitled to a monetary award equivalent to double the monthly rent if the landlord did not use the premises for the purpose stated in the 2 Month Notice issued under section 49 of the Act. This former provision, which was changed in May 2018, applied at the time that the tenant was issued the 2 Month Notice in December 2017, which was effective in February 2018.

Section 51(2) stated:

51 (2) In addition to the amount payable under subsection (1), if
(a) steps have not been 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
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties. The tenant vacated the rental unit pursuant to the 2 Month Notice, which was issued by the landlord, so that the landlord could renovate or repair the rental unit.

The tenant confirmed that she had asked the landlord for repairs to be done. The tenant testified that believed the renovations were done and she had no evidence to dispute same.

Most of the tenant's argument during the hearing, was focussed on the good faith aspect of the 2 Month Notice, which is examined when disputing the notice, not when determining compensation for the reason on the notice after the tenant moved out. The

tenant voluntarily settled her application to dispute the 2 Month Notice at the previous RTB hearing by agreeing to move out by March 1, 2018. She claimed that she was forced to move out but also stated that she moved out because of the loud noise of the occupants living above her and that she offered a mutual agreement to end tenancy to the landlord who did not sign it.

I accept both parties' evidence that the landlord completed renovations to the rental unit and that no permits were required. The landlord provided photographs of the renovations in the unit, a drawing of the work to be done, and documentary proof of the expenses for the renovations. The landlord provided testimonial evidence that she spent over \$10,000.00, not including labour expenses, for the renovations. The tenant did not provide any evidence disputing same.

I accept the landlord's documentary and testimonial evidence that the renovations were so extensive that it required the rental unit to be vacant. She maintained that a previous renovation of a leak in the unit caused the tenant to be asthmatic and have other sensitivities, which the tenant did not dispute. The landlord confirmed that the renovations were all done at the same time, it was not safe or possible for the tenant to be living there, and the tenant's belongings could not be there.

Therefore, I find that the tenant is not entitled to compensation of \$1,970.00, which is double the monthly rent under section 51(2)(b) of the *Act*. This claim is dismissed without leave to reapply. I find that the landlord completed the renovations within a reasonable period after the effective date of the 2 Month Notice and the tenant vacating. I find that the landlord issued the 2 Month Notice for a proper reason and fulfilled the reason on the notice.

I further find that the tenant is not entitled to moving, storage, new rent, or new security deposit expenses, as a result of having to vacate the unit because the 2 Month Notice was issued for a proper purpose. Therefore, these claims totalling \$6,117.71, are dismissed without leave to reapply.

The tenant's claim for lawyer expenses of \$126.01 is dismissed without leave to reapply. The tenant confirmed that this claim was for obtaining legal advice to determine whether she should file this application. The only hearing-related expenses recoverable under section 72 of the *Act* is for filing fees.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire application 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: May 13, 2020

Residential Tenancy Branch