



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investments Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, the former manager and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenants' application for dispute resolution and amendment via registered mail.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts:

- this tenancy began on February 1, 2017 and ended on December 31, 2018;
- monthly rent in the amount of \$1,486.00 was payable on the first day of each month;
- a security deposit of \$700.00 was paid by the tenants to the landlord and was returned to the tenants at the end of the tenancy;
- the landlord served the tenants with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Four Month Notice") on November 28, 2018;
- the Four Month Notice states that the landlord is ending the tenancy because the landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant;
- the tenants did not dispute the Four Month Notice;
- the tenants served the landlord with 10 day's notice to vacate the subject rental property before the effective date on the Four Month Notice;
- On December 19, 2018 the tenants gave the landlord a Tenant Notice: Exercising Right of First Refusal;
- the tenants moved out on December 31, 2018;
- the landlord served the tenants with the landlord's 45 Day Notice of Availability which was received by the tenants on March 8, 2018;
- the 45 Day Notice of Availability is dated March 8, 2018 and states that the subject rental property is available for April 1, 2019; and
- the tenants did not move back into the subject rental property.

The tenants testified that other tenants in the same building fought the Four Month Notices they were served on the ground that the renovations did not require vacant possession and they won. The tenants entered into evidence a Residential Tenancy Decision stating same.

The tenants testified that they were evicted in bad faith and that the renovations could have been done while they remained in the subject rental property. The tenants testified

that they are seeking 12 months rent as compensation, pursuant to section 51 of the *Act*.

The landlord's agent testified that the tenants chose not to dispute the Four Month Notice when it was served on them, and cannot now come after the landlord. The landlord's agent testified that extensive renovations were completed and the property was renovated in good faith.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 49(6) of the *Act* states:

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;
- (c)convert the residential property to strata lots under the [Strata Property Act](#);
- (d)convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f)convert the rental unit to a non-residential use.

Section 49(6)(b) of the *Act* states that in order to evict a tenant, a landlord must intend in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. When a tenant decides to dispute a Four Month Notice, the arbitrator must determine if the landlord acted in good faith. In this case, the tenants chose not to

dispute the notice. Section 51 of the *Act*, under which the tenants seek to collect 12 months' rent in damages, does not have a clause pertaining to good faith. I find that good faith is not determinative of a section 51 claim.

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(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.

Both parties agree that the tenancy ended on December 31, 2018. Both parties agree that the subject rental property was available for the tenants to move back in on April 1, 2019. Therefore, the subject rental property was renovated for a maximum of three months. Section 51(2)(b) of the *Act* clearly states that the tenants are entitled to 12 months rent if 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. I find that the subject rental property was not used for the stated purpose of renovation, for the required six-month period of time. I therefore find that the tenants are entitled to 12 months rent.

I find that the landlord's agent has not provided me with any testimony showing extenuating circumstances which prevented the landlord from using the rental unit for that stated purpose or renovation, for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In addition, section 51.2 of the *Act* states:

51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

(2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant

(a) a notice of the availability date of the rental unit, and

(b) a tenancy agreement to commence effective on that availability date.

Section 51.3 of the *Act* states:

51.3 (1) Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2).

(2)The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from complying with section 51.2 (2).

Both parties agree that the 45 Day Notice of Availability states that the subject rental property is available for April 1, 2019. The tenants testified that they received the 45 Day Notice of Availability on March 8, 2019. The 45 Day Notice of Availability was entered into evidence and is dated March 8, 2019. The landlord provided the tenants with less than 45 days' notice of the availability of the rental unit, contrary to section 51.2(2) of the *Act*. Pursuant to section 51.3 of the *Act*, the tenants are entitled to 12 months' rent compensation.

I find that the landlord's agent has not provided me with any testimony showing extenuating circumstances which prevented the landlord from providing the full 45 days notice.

Pursuant to sections 67, 51, 51.2 and 51.3 of the *Act*, I find that the tenants are entitled to 12 months' rent compensation in the amount of \$17,832.00.

As the tenants were successful in their application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$17,932.00.

The tenants are provided with this Order in the above terms and 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: September 24, 2020

Residential Tenancy Branch