



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNRT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended. The landlord attended with his son KB who spoke on behalf of the landlord ("the landlord"). The landlord called the witness PK who provided affirmed testimony.

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

At the outset, the tenant withdrew his claim for reimbursement of the security deposit. The tenant confirmed the only claim at the hearing was the request for twelve months' rent as compensation under section 51(2).

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The landlord testified that the tenancy began on November 1, 2013. Monthly rent was \$1,300.00, due on the first of the month. The security deposit was the subject of a previous decision, reference to which appears on the first page.

The parties agreed on the following:

1. The landlord issued a Two Month Notice to End Tenancy for Landlord's Use (the Notice") dated January 31, 2019;
2. The tenant did not dispute the Notice;
3. The tenant vacated the unit on April 30, 2019.

The tenant claimed that the landlord did not occupy the unit as required under the Act after the tenant vacated and that he is entitled to twelve months' rent as compensation. The tenant submitted testimony and witness statements that the unit was not occupied.

The landlord testified as follows:

1. The unit needed considerable renovations when the tenant vacated including replacement of flooring, drywall repair of holes in the wall, replacement of molding, and painting/cleaning to eradicate the smell of smoke;

2. The landlord submitted photographs of the unit taken when the tenant vacated which supported his claim that repairs were required;
3. The landlord hired the contractor PK when the tenant vacated who provided testimony that he started work renovating the unit as soon as possible; he worked in June and July 2019 for a fee of \$7,500.00;
4. The contractor PK confirmed that the unit required the renovations described by the landlord including the eradication of the smell of smoke;
5. The landlord moved in July 7, 2020 when the renovations were finished;
6. The witness PK confirmed that the landlord lived in the unit starting in early July 2020 and that PK attended from time to time after that for routine maintenance;
7. The landlord was experiencing health challenges and received notice in December 2019 he required surgery;
8. The landlord had trouble living on his own because of the health matters and accordingly moved home to his parents on December 16, 2019;
9. The surgery took place on February 20, 2019, the landlord recovered at his parents' home, and he moved back in to the unit in May 2020 where he still resides;
10. The landlord acknowledged that he occupied the unit from July to December 2019, a period of four months, moved elsewhere for medical reasons, and returned mid-May 2020 to the unit where he currently lives.

The tenant claimed compensation of twelve months' rent and reimbursement of the filing fee. The landlord claimed he complied with the Act to the best of his ability and requested the tenant's claim be dismissed without leave to reapply.

Analysis

The parties submitted considerable testimony and evidence in a 1-hour hearing. Only key aspects of the evidence are referenced in my decision.

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the landlord credible and sincere. I found the landlord's testimony, which was supported in all key aspects by documentary evidence and by the witness PK, to be the more persuasive and believable.

I found the tenant to be less persuasive about the key facts of the situation. I considered his claim and evidence of less reliability than the landlord's. I do not give significant weight to the tenant's evidence.

As a result of my assessment of the credibility of the parties, I gave greater weight to the landlord's account; where the evidence of the parties' conflict, I prefer the landlord's version of events.

Landlord's Use

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

Section 49 provides in part as follows:

49 (2) Subject to section 51 [...], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 provides in part as follows (emphasis added):

(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.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

Taking Steps to Accomplish the Stated Purpose

A step is an action or measure that is taken to accomplish a purpose. What this means depends on the circumstances. For example, if a landlord ended a tenancy to renovate or repair a rental unit, a step to accomplish that purpose might be:

- Hiring a contractor or tradesperson;
- Ordering materials required to complete the renovations or repairs;
- Removing fixtures, cabinets, drywall if necessary for the renovations or repairs.

Evidence showing the landlord has taken these steps might include employment contracts, receipts for materials or photographs showing work underway.

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends.

However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

I accept the landlord's testimony, supported by documentary evidence and the contractor/witness PK's testimony, that the unit needed renovations and the removal of smoke odour before the landlord could move in. I accept the landlord's testimony as supported by PK's testimony, that the contractor PK was busy and started work as soon as possible in June 2019 and finished in early July 2019; both the landlord and PK testified that the landlord moved in a week later.

In considering the testimony and evidence, I find the landlord took steps to accomplish the stated purpose in the Notice within a reasonable time, that is, a time that was fairly required for the landlord to hire a busy contractor, carry out the work required, and move in. I find the landlord acted expeditiously and as quickly as possible. I find the landlord occupied the unit in a reasonable time.

I find the tenant has not established the tenant's claim on a balance of probabilities. Accordingly, I dismiss the tenant's claim without leave to reapply.

As the tenant was not successful in his claim, I do not award the tenant reimbursement of the filing fee.

Conclusion

I dismiss the tenant's claim 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: September 29, 2020

Residential Tenancy Branch