



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an application for Dispute Resolution (the “Application”) on May 22, 2020 seeking compensation for monetary loss or other money owed. Additionally, they are seeking reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on September 24, 2020 pursuant to section 74(2) of the *Act*. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

One of the tenants and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the landlord confirmed they received the notice of this hearing and the tenant’s evidence via registered mail. The tenant noted the landlord provided evidence close to the timeline allowed prior to the hearing. They did provide they were familiar with the documents provided. I proceeded with the hearing based on that confirmation. The tenant acceded and wished to proceed to the hearing of the issues.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The terms of the tenancy were not in dispute. The agreement was for the tenants to pay \$900.00 per month at the start of each month. There was an initial payment of \$300.00 for a security deposit. The tenancy started with the tenant who was not present in the hearing. The tenant in the hearing stated the tenancy was in place for “over 15 years” with the non-attending tenant.

The landlord issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four-Month Notice”) on May 23, 2019. This gave the tenants the final move out date of October 1, 2019. The landlord gave the reason of “renovations or repairs that are so extensive that the rental unit must be vacated.” They provided that all flooring would be replaced, the toilet and vanity would be replaced with other rooms receiving electrical or other upgrades “as needed.”

Upon service of this Notice, the tenant stated their intention to not pay rent for the remainder of the tenancy until October 1, 2019. The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent for each of June 2019 and July 2019. The tenant challenged the first 10-Day Notice, and the dispute resolution proceeding was on July 25, 2019.

The tenancy ended on August 15, 2019. This was by the agreement the parties reached in the July 25 hearing. The agreement also stipulated that the tenants were vacating pursuant to the landlord’s Four-Month Notice of May 23, 2019. The parties also reached agreement on outstanding rent amounts, with the cancellation of the two 10-Day Notices.

For this hearing, the landlord provided a copy of the Arbitrator decision dated July 25, 2019. The tenant stated they were never provided a copy of this prior decision when it was issued in 2019; however, they did review this prior to this present hearing.

The tenant applied for the compensation amount of \$10,800.00. They provided a description of the claim on their Application on May 22, 2020: “Was renovicted in bad faith. No work has been completed on rental house”. In the hearing, the tenant particularised their Application:

- from the date of their Application to the date of this hearing on September 24, 2020, the tenant observed that work only began on July 13-14-15 2020;
- they questioned the longer length of time the landlords undertook to begin work after the issuance of the Four-Month Notice on May 23, 2019: “do they have 2 years, [or] 5 years to do this work?”
- as of May 22, 2020, the date they applied for this hearing “not one thing was done to the house”
- initially when the landlords issued the Four-Month Notice, the tenant raised their concern to say to them: “you are not meeting the requirements [of issuing this document]” and this was the pretext for them telling the landlords directly: “I’m not even going to pay rent to you”
- they reiterated there were “several conversations” wherein they stated their concerns to the landlord when they issued the Four-Month Notice
- additionally, they restated that they discussed the Four-Month Notice with the landlords at the prior arbitration hearing in 2019.

For this hearing, the landlord provided their 8-page submission. In addition to reviewing the background and providing the relevant legislation, they provide the following key points on the July 25, 2019 settlement:

- in the settlement, both parties agreed that the tenants were entitled to one-month free rent compensation pursuant to the Four-Month Notice, by the *Act* s. 51(1);
- the landlords “recognized that substantial repairs were necessary. . . a decision was made to serve the 4 Month Notice”;
- “upon serving the Four-Month Notice, the landlord was in the process of scheduling renovations that meet the requirements set out in section 49(6)”;
- the tenants were ordered (as per the previous hearing) to vacate as a result of the non-payment of rent – the purpose of the hearing was for non-payment of rent;
- the tenants did vacate due to the non-payment of rent;
- the Four-Month Notice “was not discussed in any manner during the [July 25, 2019] hearing, as this was not the purpose nor the subject matter”.

The landlord’s position is set out in paragraph 20 of their submissions:

It is the position of the landlord that any obligations which would flow from the 4 Month Notice as per section 49 of the *Act*, were extinguished as a result of the

non-payment of rent by the tenants and subsequent order made at the hearing to vacate the Property.

The landlord provided a letter from a contractor dated September 4, 2020. It states: "The renovation of the house will take at least 6-8 months." Three photos provided show work "currently being carried out" as of early September 2020. In the hearing, the landlord stated there were funds needed prior to any renovation; in these circumstances, this involved a grant of probate. They added that the rental unit was assessed by a contractor in autumn; additionally, the unit was tested for asbestos in early spring.

In sum, the landlord responds to the tenant's claim in a twofold manner: the tenant vacated because of non-payment of rent; alternatively, the landlord ended the tenancy in good faith with intentions to renovate the property.

Analysis

The issue lies in the nexus between the 10-Day Notice and a One-Month Notice, with each separately being a plausible reason for ending the tenancy. The landlord maintains that the 10-Day Notice carries the exemption from the otherwise applicable rules for the Four-Month Notice in this matter. Conversely, the tenant submits the Four-Month Notice was discussed at the prior hearing and was the reason for ending the tenancy. From the tenant's submissions I understand their claim is that the landlord has not followed up on the issuance of the Four-Month Notice by starting work; therefore, it was issued in "bad faith."

I make no decision on the issue of bad faith. That truly is a question where a party is disputing the issuance of a notice to end tenancy. That is not the issue here.

What the tenant claims for monetary compensation is provided for in section 51 of the *Act*:

- (1) A tenant who receives a notice to end a tenancy under section 49 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.
- (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 . . . if in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

I find the issue of the Four-Month Notice was the subject of discussion in the prior 2019 hearing. This was recorded in the settlement agreement dated July 25, 2019. The binding agreement states: Both parties agreed that the tenants are vacating the rental unit pursuant to the landlords' Four-Month Notice. . . dated May 23, 2019." The landlord had the opportunity, post-hearing, to seek clarification on that discrete point after receiving the settlement decision.

Further, the landlord agreed to the stipulation, also in the settlement agreement that "the tenants are entitled to one month free rent compensation for July 2019, pursuant to the 4 Month Notice and section 51 of the Act". This further enforces that the end of tenancy falls under the terms of section 49, with a notice issued for the landlord's use of property.

I find it is inconsequential what the tenants applied for in the prior hearing. The settlement agreement also sets out that "the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute." While the landlord denies the Four-Month Notice was the subject of discussion, I find the tenant's assertion that it was discussed is authenticated by the specific terms found in the settlement agreement.

In sum, I find the obligations of the landlord were not extinguished, as they posit, at the time of the previous Arbitrator decision. It was a settlement, subject to both parties' consent and approval on its terms – this necessarily applies to the reason for service of the Four-Month Notice.

The landlord presented that they have been dealing with a lot of material matters along the way since the tenancy ended. In the hearing the landlord stated the earliest the contractor could come to the unit was in March 2020; however, they also stated a contractor visited to the unit in autumn. This is not resolved in the documentary

evidence provided. If there was an initial inspection revealing the need for asbestos testing, this was not presented clearly by the landlord in the hearing. I find it more likely than not that there was a significant amount of time after the agreed-upon end of tenancy before any actual steps toward renovation were taken. Alternatively, the following spring is also a significant period of time after the issued Four-Month Notice end-of-tenancy date of October 31, 2020. I find there was no work undertaken toward the goal of renovation and the letter provided by the contractor dated September 8, 2020 provides no evidence to show otherwise.

From what the landlord presented here I find there were no steps taken within a reasonable period after the effective date of the notice to accomplish the stated purpose. I find the landlord did not provide sufficient evidence to establish extenuating circumstances in regard to having funds in place. This leaves tenant eligible to receive compensation under section 51(2).

Conclusion

I order the landlord to pay the tenants the amount of \$10,900.00 which includes \$10,800.00 for 12 months rent amount and the \$100.00 Application filing fee. I grant the tenants a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 23, 2020

Residential Tenancy Branch