



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1187701BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On August 28, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord attended the hearing. The individual Landlord identified himself as the principal of the corporate Landlord. The Tenant and Landlord were both assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenant’s entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties testified that the tenancy began in April of 2008 and is on a month to month basis. The Landlord purchased the rental unit in 2019 and inherited the existing

tenancy. Rent in the amount of \$1,709.00 was due to be paid to the Landlord by the first day of each month. The tenancy ended on November 30, 2019 after the Tenants received a notice to end tenancy from the Landlord.

The Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2019 ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy within the Two Month Notice is:

The Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days or accept that the tenancy is ending and move out by the effective date of the Notice.

The Tenants accepted the Two Month Notice and moved out of the rental unit on November 30, 2019.

Money Owed or Compensation for Damage or Loss Under the Act

The Tenants are seeking compensation in the amount of \$20,508.00 which is twelve months of rent paid under the tenancy agreement.

The Tenant submitted that the Landlord or a close family member has not moved into the rental unit and occupied the property. The Tenant's counsel submitted that a reasonable period to start using the rental unit would be about 15 days from the end of the tenancy.

The Tenant provided testimony regarding the condition of the rental house. He testified that the house was built in the 1950's or 60's and when he first moved into the house there was no serious damage. He testified that prior to moving out there were deficiencies in the home. He testified that the roof was leaking; there was water damage present; and the presence of mold and mushrooms growing in the downstairs bathroom. The Tenant testified that he informed the Landlord of the water damage on September 30, 2019 when the Landlord served him the Two Month Notice.

The Tenant testified that having to move presented a hardship as he was preparing for the arrival of his baby when the Landlord served the Two Month Notice. The Tenant

stated that he had to move to another locale and now pays a higher monthly rent of \$2,300.00.

The Tenant's legal counsel submitted that the Tenant was evicted on the pretense that the Landlord or close family member was moving into the home on January 1, 2020; however, the Landlord has not occupied the home. Legal counsel submits that the Residential Tenancy Branch Policy Guideline is clear that the Landlord or a close family member must move in.

The Landlord's counsel responded by asking the Tenant questions regarding work he performed to the rental home. The Tenant testified that he performed random construction to the home for the last 4-5 years including work on the front stairs, replacement of a window, and painting of some interior rooms. The Tenant testified that the rental unit he moved to is a step up from the rental home. The Tenant testified that he first met the Landlord on September 30, 2019.

The Landlord's counsel submitted there was no pretense for eviction; there were renovations that took longer than expected.

The Landlord's counsel stated that there is an adequate explanation for why the Landlord did not move into the home. I have summarized the Landlord's response to the questions asked of him by his legal counsel:

- I have a 23-year-old daughter and my 19-year-old son are attending university.
- My daughter plans to complete her masters degree here or back east.
- I provided a residential option which allowed my daughter to remain here.
- I started planning for my children's future when my daughter was 15 /16 years old.

The Landlord testified that he began searching for a property for his children and looked at a condo prior to attending an open house for the house subject to this dispute. The Landlord testified that the house was built in 1910 and provided a copy of the real estate listing and sale agreement. The Landlord testified that he knew the house was in poor shape and that the owner had a contract in place for the repair of the roof. The Landlord testified that he made an offer with no conditions for the purchase of the home. The Landlord testified that he did not have an inspection of the property conducted prior to making the purchase offer because there were other prospective buyers. The Landlord testified that he did not access the back stairwell of the home when he viewed the property and did not know the extent of damage to the structure of the building.

The Landlord testified that it was his intention to clean up the place and put his children in it. He testified that he expected that his children could move in within two months.

The Landlord testified that the extensive plumbing damage and water damage that was present affected his plans to have his children move into the unit. The Landlord testified that on December 17, 2019, he became concerned about the safety of his children to move into the unit. The Landlord testified that he had a plumber attend the residence and found that the plumbing system needed to be replaced. The Landlord testified that the plumbing has been completely replaced except for the final connection to the city sewer which will be a 4-6 month wait.

The Landlord testified that an electrician also found electrical issues and the home needed to be upgraded to 200-amp service. The Landlord testified that the electrical work was completed in August 2020.

The Landlord testified that an existing loft was not permitted to be used and had to be closed off due to a weight load issue related to construction using 2x4 rather than 2 x 8 lumber.

The Landlord testified that extensive damage was found after removing the drywall in the bathroom. The Landlord testified that this work was repaired in August 2020.

The Landlord testified that the heating system was not working properly. The Landlord testified that the heating system was replaced in August 2020.

The Landlord testified that on January 19, 2020 they applied for a city permit for the gas and heating system. After a complaint was made from a neighbor, the city attended the property on February 12, 2020 and issued a stop work order. The Landlord and Tenant provided a copy of the stop work order. The Landlord testified that he applied for development permit in June 2020. The Landlord provided a copy of a development permit dated June 9, 2020. The Landlord testified that there are two suites; one for his daughter, and one for his son.

The Landlord responded to questions asked by the Tenants legal counsel. When asked why the Landlord did not arrange for an inspection when he knew there was a leaky roof, the Landlord replied that he did not think it was necessary and that he had lined up his trades people to do what was needed.

The Tenant's counsel submitted that the Landlord was aware of the condition of the residential property and proceeded to end the tenancy by way of a notice to end tenancy under section 49(3) of the Act instead of a notice under section 49(6) of the Act. He submitted that the Landlord's actions deprived the Tenant of his rights under the Act because the Landlord would have needed to issue a four month notice and establish that the rental unit was required to be vacant. The Tenants counsel submitted that the Tenant had to move out prior to the birth of his child and is now paying higher rent.

The Tenant's counsel submitted that by issuing the Two Month Notice, the Landlord was able to proceed with doing renovations without serving a four month notice and without getting required permits. Counsel submitted that Residential Tenancy Branch Policy Guideline # 50 is instructive on this issue that a Landlord must occupy the unit as stated in the Two Month Notice.

The Tenant's counsel submitted that it has been one year since the tenancy ended and the Landlord has still not occupied the rental unit.

In reply, the Landlord's counsel submitted that when the Two Month Notice was issued the house was not fit for human occupation. He stated that it would have been shut down in an instant.

Landlord's counsel submitted that the issue is simply whether there is a reasonable explanation for the Landlord not having a family member living in the unit; and counsel submitted that the answer is yes.

The Landlord's counsel submitted that the Landlord knew there were electrical issues and a roof issue but was not aware of structural issues and plumbing issues.

Analysis

Section 51 (2) of the Act provides:

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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy provides the following information with respect to extenuating circumstances:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

*This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. **A landlord cannot renovate or repair the rental unit instead.** The purpose that must be accomplished is the purpose on the notice to end tenancy. [my emphasis]*

Policy Guideline #50 also provides information on extenuating circumstances.

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. Some examples where it would be unreasonable and unjust for a landlord to pay compensation are:

- 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.*

The Guideline also provides that the following are probably not extenuating circumstances:

- *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.*

Based on all of the above, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 51

I find that the Tenant's moved out of the rental unit on November 30, 2019, and the Landlord has not occupied the rental unit since that time. I find that the rental unit was not used for the purpose stated in the Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation.

I have considered Policy Guideline #50 Compensation for Ending a Tenancy and I note that the circumstances provided such as fire or death, where it would be unreasonable and unjust for a landlord to pay compensation, are serious and/ or significant circumstances. I find that the circumstances that need to be present to excuse a landlord from paying compensation need to be significant.

I have considered that the Landlord chose to not have a home inspection completed which would have made him aware of the condition and state of repair of the rental unit prior to purchasing it. I find this notable because the Landlord purchased the property and inherited the tenancy taking on an obligation under the Act to provide and maintain the residential property in a state of decoration and repair that makes it suitable for occupation by the Tenant.

I find that the Landlord knew the rental unit was in need of repair when he purchased it, and this is supported by the submission from his counsel that the rental unit was not fit for occupation and would have been shut down in an instant. The Landlord testified that he did not inspect the entire property. He stated that he did not access the back

stairwell of the home when he viewed the property and did not know the extent of damage to the structure of the building. He stated that he did not think an inspection was necessary as he had lined up his tradespeople to do what was needed. I also note that the Landlord testified that the city shut down the repair work and required the Landlord to get building permits.

I find that the Landlord did not exercise due diligence by making himself fully aware of the condition of the home prior to purchasing the residential property and issuing the Two Month Notice. I find that the Landlord was aware of some deficiencies in the home and he should have taken reasonable steps to ensure he could meet the legality of ending the tenancy by issuing a Two Month Notice.

In accordance with section 51(3) of the Act it is my finding that the circumstances submitted by the Landlord as an excuse from paying compensation to the Tenant do not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and the policy guideline.

I find that the Landlord owes the Tenants \$20,508.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$20,608.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The circumstances submitted by the Landlord as an excuse from paying compensation to the Tenant do not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and policy guideline.

The Tenants are granted a monetary order in the amount of \$20,608.00 for the Landlords breach of the Act and the cost of the filing fee.

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 30, 2020

Residential Tenancy Branch