



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2).

Both parties attended the hearing. The tenants were assisted by advocate EP. The landlord was assisted by advocate AL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimony I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue to be Decided

Are the tenants entitled to a monetary award for compensation under section 51(2) of the Act?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate the application.

The landlord served a two-month notice to end tenancy (the Notice) so that the landlord could move in. The tenants are claiming the landlord did not occupy the rental unit for at least six months after February 01, 2020 and therefore owes them compensation equivalent to 12 months of rent. The landlord claims she moved in on February 07, 2020, listed the rental unit to re-rent on August 07, 2020, moved out on August 20, 2020 and new tenants moved in on September 01, 2020, paying a monthly rent of \$2,300.00.

Both parties agreed the tenancy started on July 06, 2005 and ended on February 01, 2020. Monthly rent in the amount of \$1,511.00 was due on the first day of the month. The tenants authorized the landlord to retain the \$550.00 security deposit collected at the outset of the tenancy.

Both parties agreed the tenants received the Notice on November 26, 2019. A copy of the Notice was submitted into evidence. It states:

Reasons for this Two Month Notice to End Tenancy (check the box that applies)

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The effective date of the Notice was January 31, 2020.

Tenant SL stated the landlord told her on February 01, 2020 she planned to renovate and re-rent the rental unit after six months. The landlord testified she told tenant SL she planned to re-rent the unit.

The tenants and their advocate affirmed they drove by the rental unit six or seven times between February and July 2020 and the rental unit was always empty. The rental unit has large windows and during this time there were no window coverings.

The landlord submitted into evidence an electricity bill. The total cost from February 02 to 20, 2020 is \$18.90. The average cost of electricity is \$0.88 per day. The landlord also submitted a natural gas bill. The total cost from February 01 to 14, 2020 is \$40.65. The landlord's advocate said that at first they were not living in the rental unit, but after the first two months the utilities bills increased to \$158.00. The landlord explained the electricity bill was not so high because the rental unit has large windows, so there is plenty of natural light in the rental unit.

Tenant SL stated their utilities bills were almost twice higher than the amounts paid by the landlord, specially during winter.

The tenants' advocate affirmed on August 07, 2020 she saw a rental listing for the same unit. The listing, submitted into evidence, includes a photograph of the rental unit empty. The asking price for the "Newly Renovated 3 Bedroom for rent" is \$2,300.00. The landlord's advocate said the photographs were taken before August 07, 2020, during the renovation, and the landlord's furniture was removed only to take the photograph.

The landlord's advocate testified the rental unit was not liveable when the tenancy ended and the landlord needed to extensively renovate it. Because of the pandemic it was harder to hire contractors.

The landlord affirmed twice she moved to the rental unit on February 07, 2020. The landlord's advocate, daughter of the landlord, said "eventually, slowly we started moving there. We were still renovating, painting and cleaning". The landlord's advocate also testified, at a later point, both the landlord and herself were "trying to live and renovate the rental unit at the same time".

Tenant CL affirmed she received a text message from a former neighbour that lives in the same rental building on June 05, 2020 stating the rental unit is empty. The text message, submitted into evidence, states: "You should see your place here now all renovated new kitchen, bathroom, all floors etc. [omitted] place also but both are still vacant."

The landlord affirmed the rental complex has four rental units and she owns all of them. During the renovation her advocate lived at the house where the landlord currently lives. The landlord's advocate stated during the renovation sometimes she lived with the landlord at the rental unit and sometimes she lived at the house where she currently lives.

Analysis

Section 49(5) of the Act states:

- (5)A landlord may end a tenancy in respect of a rental unit if:
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser 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.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Based on the undisputed testimony and the Notice, I find the Notice was served with the intent of the landlord occupying the rental unit.

The parties offered conflicting testimony regarding the occupancy of the rental unit by the landlord after the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The two tenants and their advocate offered a convincing, coherent, trustworthy and straightforward testimony about the rental unit not being occupied by the landlord between February 01 and July 31, 2020.

The landlord admitted she planned to re-rent the unit when the tenancy ended. The landlord and her advocate contradicted themselves at least twice, while testifying under affirmed testimony, about the move-in date. The landlord stated twice she moved in on February 07, 2020. The landlord's advocate (and daughter) stated twice they could not move in on February 07, 2020 because of the rental unit's condition and the necessity to renovate it.

I find the utilities bills submitted by the landlord have extremely low amounts of consumption, specially during winter months. The landlord's advocate testimony about removing the rental unit's furniture to take photographs for a rental listing lacks an air of credibility.

The summary of the landlord's testimony is:

- she lives in another house in the same city where she owns the four-rental unit complex;
- she needed to move to one of the rental units while it was undergoing renovation;
- immediately after six months and the end of a renovation she moved back to her house;
- the rental unit was re-rented at a monthly rent over 50% higher than the previous rental.

I find the landlord and her advocate's testimony is contradictory, not straightforward and not trustworthy.

Residential Tenancy Branch Policy Guideline 50 states:

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:

- ☐ so extensive that the rental unit must be vacant in order for them to be carried out, and
- ☐ the only manner to achieve that vacancy is by ending the tenancy.

If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

Based on the tenants and their advocate testimony, the text message dated July 05, 2020 and the utilities bills, I find the landlord did not occupy the rental unit for at least six months after February 01, 2020 and instead conducted renovations and re-rented the unit at a monthly rent over 50% higher than the previous rental.

Based on the coherent and undisputed testimony, I find the monthly rental payment was \$1,511.00.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$18,132.00.

Conclusion

Pursuant to sections 51(2) of the Act, I grant the tenants a monetary award in the amount of \$18,132.00.

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: December 11, 2020

Residential Tenancy Branch