



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Everise Developments Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's 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 director of the landlord company (the "director"), counsel for the landlord and the tenant 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 this application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

Issue to be Decided

Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Is the tenant 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 tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on November 30, 2018. Monthly rent in the amount of \$1,521.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the parties had a previous arbitration in which the issues between them were settled. The file number for the previous decision is on the cover page of this decision. The settlement decision is dated July 19, 2018. The parties agreed to the following terms:

1. The parties agree that the Two Month Notice to End Tenancy on file dated April 30, 2018 is sufficiently served on the tenants as of today's hearing date and the parties agree that the effective date of the Notice is **November 30, 2018**. The landlord is not required to serve a new Notice to End Tenancy for Landlord's Use of Property.
2. The parties agreed that that this tenancy will end *no later* than **1:00 p.m. on November 30, 2018**, and, the landlord will be granted an **Order of Possession** effective this date.
3. The tenants are entitled to the equivalent of one month rent free under section 51(1) of the Act and the tenants shall be entitled to apply that to the month of November 2018.
4. The tenants may end the tenancy early by providing the landlord with at least 10 day's written notice to end the tenancy on a date that is earlier than November 30, 2018 pursuant to section 50 of the Act. A notice under this section does not affect the tenants' right to compensation under section 51 of the Act.
5. The tenants retain the right under section 51(2) of the Act to claim against the landlord 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.

The Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") dated April 30, 2018 was entered into evidence and states that the reason for the issuance of the Notice was:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that required the rental unit to be vacant.

The tenant testified that she is seeking 12 months' rent compensation under section 51 of the *Act* because the landlord did not act in good faith and did not demolish, renovate or repair the unit in a manner that required it to be vacant.

The tenant testified that after six months the building was still standing and that no major renovations had been completed.

Counsel for the landlord submitted that the landlord applied to subdivide the subject rental property on December 18, 2017 and that a conditional letter of approval was received by the City of the subject rental property on March 23, 2018. The conditional letter of approval was entered into evidence.

Counsel for the landlord submitted that the conditional approval letter set out the work required to be completed on the property for the property to be subdivided which included:

- a) removal of the shed and outbuildings;
- b) removal of the staircase and landing;
- c) regrade soil over the lot;
- d) remove and replace trees;
- e) repair/replace storm drain and connectively of the storm drain to the premises;
- f) replace water connection; and
- g) repair/replace sewer connection.

The conditional letter entered into evidence confirms the above.

Counsel for the landlord submitted that the above construction works meant that large scale construction projects would be happening at the subject rental property and would necessitate the shutdown of water and sewer connections for periods of time. Counsel for the landlord submitted that the removal of the staircase made the subject rental property unsafe and unfit for habitation. Counsel submitted that tenants could not safely inhabit the premises while the construction works were occurring.

Counsel for the landlord submitted that the construction works started within two months of the landlord taking possession of the subject rental property. Counsel submitted that it would not be possible for tenants to reside at the property when the water and sewer were disconnected.

The landlord entered into evidence photographs of the exterior landing and stair removed. The affidavit of the director, which was entered into evidence, states that the photographs were taken in March of 2019.

Counsel for the landlord submitted that new water and sewer connections were installed and connected in or about mid 2019 and drainage work was completed in early 2019.

The director's affidavit states that "most of the construction works required by the [City] were completed and the Premises have since been sold by [the landlord] in October of 2019, and I understand that construction has continued since that time.

The tenant testified that she does not believe that the work completed by the landlord required vacant possession and that temporary accommodation could have been found while water and sewer work were completed.

Counsel for the landlord submitted that the subject rental property was a construction site for over one year and that during that time the subject rental property was not safe for habitation. Counsel for the landlord submitted that it was not possible to have all the contractors at the subject rental property at the same time and that the property was uninhabitable for the duration of the construction project.

Analysis

Section 51(2) of the *Act* states that 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.

The tenant testified that the landlord did not act in good faith. I find that good faith has no place in a section 51 claim, what matters in a section 51 claim are the actions of the landlord of the subject rental property. Good faith only comes into play if a tenant is seeking to dispute a Two Month Notice. Section 49(3) of the *Act* states:

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.

In this case, the tenant agreed to end the tenancy pursuant to the Two Month Notice. Section 51 of the *Act*, around which this claim is centered, does not contain a "good faith requirement".

Based on the testimony of the tenant, the submissions of counsel for the landlord and the sworn affidavit of the director, I find that:

- the landlord took steps, within a reasonable period of time after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy; and
- the rental unit was used for the purpose of renovation and repair in the six months following the landlord's possession of the rental unit.

I accept the submissions of counsel for the landlord regarding the scope of works completed at the subject rental property. I find that the works, including stair removal, water and sewage work required vacant possession of the subject rental property as the property would not be habitable without them. I accept counsel's submissions that the works could not all be completed at one time and that it would not be reasonable for the tenant(s) to move in and out every few weeks for the duration of the construction.

Pursuant to my above findings, I dismiss the tenant's application for dispute resolution, without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application is dismissed 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: February 04, 2021

Residential Tenancy Branch