



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 and 67; and,
- recovery of the filing fee.

The Tenants attended the hearings with 2 advocates, their daughter, MC, and their friend, BM. The Landlord was represented at the hearing by her daughter, NM, and son-in-law, AM, (collectively referred to as the "Landlord") as well as a contractor and two agents DL and LC.

The agents for the Landlord confirmed receipt of the Tenant's application package on June 1, 2020, and evidence package on September 9, 2020. The Tenants confirmed receipt of the Landlord's evidence package around September 15, 2020. Neither party took issue with the service of the above noted packages, and both parties were willing and able to proceed.

All parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties agree that monthly rent was set at \$2,127.00 and was due on the first of the month. The tenancy began sometime in 2003, and lasted until December 1, 2019, which is when the Tenants moved out.

The Tenants have applied for 3 items as part of this application. They are as follows:

- 1) \$2,127.00 – 1 Month's compensation pursuant to section 51 of the Act

The Tenants stated that they received a 2-Month Notice to End Tenancy for Landlord's Use (the Notice) from the Landlord on October 24, 2019. A copy was provided into evidence. Subsequently, the Tenants located a new place to live, and gave the Landlord 10 days notice that they would be leaving early, effective December 1, 2019, rather than the initial effective date of the Notice, which was set for December 31, 2019. The Tenants stated they never received any compensation under the Notice, and they should be entitled to the equivalent of one month's worth of rent.

The Landlord does not dispute that they owe the Tenants one month's rent pursuant to section 51 of the Act. The Landlord was willing to accept this amount, and pay the Tenant \$2,127.00.

- 2) \$300.00 – Ceiling Fans

The Tenants explained that while they were living in the rental unit, they took down the light fixtures in 4 of the rooms, and installed ceiling fans. The Tenants stated that at the end of the tenancy, they called the Landlord and asked if they wanted to purchase the fans from them, otherwise the Tenants would take them down and restore the original light fixtures. The Tenants stated that this call took place on November 16, 2019, and during that call, the Landlord agreed to buy the 4 ceiling fans for \$300.00. The Tenants provided a recording of this call with the Landlord. In this call, one of the Tenants offers all 4 fans for \$300.00, and the Landlord replied by saying "yeah.. okay...that shouldn't be a problem... I will call you when I'm back in town".

The Tenant stated that the Landlord eventually sent a text to them on November 27, 2019, saying that he did not want to buy the fans. The Tenants removed two of the fans, but stated they ran out of time to remove the other two, so they were left behind. The Tenant feels \$300.00 is a fair price, but provided no basis as to how this amount was calculated.

The Landlord stated that since he told the Tenants that he didn't want to buy the fans, the Tenants should have removed them all at the time they moved out.

3) \$25,524.00 – 12 months compensation pursuant to section 51(2) of the Act

As stated above, the Tenants stated that they received the Notice from the Landlord on October 24, 2019. A copy was provided into evidence. The Landlord issued the Notice under the following ground (section 49(3) of the Act):

- 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 Landlord listed the effective date of the Notice as December 31, 2019. The Tenants chose to vacate a month early, as noted above. The Tenants pointed to a few different issues with how the Landlord has issued and followed through with the grounds indicated on the Notice.

The Tenants' advocates pointed out that when the Tenants moved out on December 1, 2019, the Landlord started doing renovations to the rental unit, rather than move in (or have a family member move in). The advocates noted that if the Landlord was going to end the tenancy for renovations, which required vacant possession, they would have had to issue a 4 Month Notice to End Tenancy, pursuant to section 49(6) of the Act. The advocates stated that neither the Landlord, nor close family member, ever moved in within a reasonable period of time. The advocates pointed to Policy Guidelines #50 to show that if a Landlord issues a Notice to occupy the unit themselves, then the Landlord cannot renovate instead.

The Tenants' advocate stated that the Landlord's daughter, N.M., and her husband, A.M., took 60 days after the Tenants moved out (until February 1, 2020) to move themselves in. The advocates stated that even 30 days is beyond a "reasonable period" of time. The advocates noted that they do not believe the Landlord's daughter and her partner moved much into the house with such a small moving bill. The advocates also

pointed to photos the Tenants took on or around January 24, and January 27, 2020, which show the Landlord was in the midst of a kitchen/living room renovation with flooring and cabinets replaced. The Tenants also took a photo showing the Landlord's daughter's car parked at her previous home at the end of January 2020, despite the fact she was supposed to be moving into the rental unit around that time.

The Tenants feel that after seeing the rental unit with all the flooring removed, on January 24, 2020, that it would have taken at least a couple of weeks to make the unit livable again. The Tenants feel the Landlord's timeline is not credible.

The Landlord's agent explained that this is a 2-level home, which consists of a 2-bedroom suite on the lower floor. There used to also be a 1-bedroom suite in the lower level. However, the Landlords removed the unpermitted 1-bedroom suite due to a complaint made by the Tenants. The Landlord stated that they used the 1-bedroom suite for a hired caretaker, and it is now connected with the upper floor (main unit).

The Landlord's agent stated that the plan was to have the Landlord's daughter, and son-in-law, live in the rental unit (main floor), and then have the Landlord live in the adjoining 1-bedroom unit. However, the Landlord's health hasn't been good enough to move her during COVID (the Landlord also has dementia). The Landlord's daughter stated that the plan is still to have her mother move in with them, but since she is a school teacher, she wants to wait until COVID is over to minimize the exposure risk to her mother.

The Tenants' advocates noted that renovating a unit is not an extenuating circumstance such that they should be excused from accomplishing the stated purpose on the Notice. The Tenants' assert that the unit was left in good condition, and it was livable, without renovations. The Tenants pointed out that removing a portion of a wall, cabinets, and flooring is fairly extensive, and the Landlord should have issued a 4-Month Notice.

The Tenants asked a couple of witness' to speak at the hearing. The first was M.C. She stated she went to the rental unit several times after the Tenants moved out to check for mail, and to take photos of the rental unit. She opined that the Landlord should have had permits for the work, as the Landlord had removed the wall between the kitchen and the dining room. She stated that when she went there on January 24, 2020, she saw a spare key lock box near the entrance to the house. She stated that this box was present for a couple of months, which shows that the Landlord was working on the rental unit for a long time. She stated she believes it would have been several months before the Landlord was able to move in.

The second witness for the Tenants, B.M., stated that he used to live two doors down from the rental unit, and he observed contractor vehicles parked at the house in late January. B.M. specifically stated that he “couldn’t recall dates” “to be honest.” He stated he saw garbage bags outside the house in the months following, and it did not appear anyone was living there.

The Tenants noted that when they drive by, it does not appear the Landlord or their family members are there during the day, and there does not appear to be many, if any, lights on at night.

The Landlord called a witness (relative), F.W., who testified that the Landlord’s son-in-law, and daughter, did in fact move into the rental unit at the beginning of February 2020. F.W. stated that he had a growing family, and required more space, which is why he moved into the Landlord’s son-in-law’s house, and then the Landlord’s son-in-law in turn moved into the subject rental unit. F.W. stated that he signed a tenancy agreement to rent the Landlord’s son-in-law’s house, starting February 1, 2020. A copy of this tenancy agreement was provided into evidence. F.W. stated that the Landlord’s son-in-law in turn moved into the subject rental unit, after he rented his house to him. F.W. stated that he visited the Landlord’s daughter, and son-in-law, at the rental unit on February 12, 2020, and saw that they had started living there.

The Landlord called a second witness, D.A., who helped with the property management, and the move-out inspection of the rental unit after the Tenants moved out. She stated that she did the move out inspection on December 1, 2019, and the Tenant was very intimidating and aggressive. She further stated that the rental unit was in bad condition (dirty, kitchen damage etc). She stated she took photos on December 1, 2019, during and after the inspection. D.A. stated that shortly after that day, a new agent, D.L., took over.

Counsel for the Tenants argued that the rental unit was in an acceptable condition, as was demonstrated at the hearing the parties had regarding the security deposit, so no renovations would have been required or needed prior to moving in.

The Landlord also had their contractor, V.E., attend the hearing and she stated that she runs a design and general contracting business. She confirmed that she was initially contacted by the Landlord (daughter and son-in-law) who wanted her to do some general painting, and cleaning of the unit before they moved in. V.E. stated that she was initially scheduled to come start the cleaning and painting at the beginning of January,

after the effective date of the 2 Month Notice, which was listed as December 31, 2019. However, the Tenants moved out at the start of December 2019, and as a result, the Landlord was able to get into the unit before the initial estimate of January 1, 2020. V.E. stated that she met with the Landlord in mid-December 2019, to look at some of the damage and mess left behind, and also to determine what other items would need "refreshing" before the Landlords moved in.

V.E. stated that the photos taken by the Landlord, and provided into evidence, showing the condition of the rental unit at the end of the tenancy, are accurate, and were how she recalls seeing it when she did a site visit in mid-December. V.E. stated that there was a lot of debris, as well as stains on the carpet/flooring, and the walls. She also noted some heavy smells. She also opined that the cabinets (kitchen and bathroom), counters, and floors (carpets, and linoleum in kitchen/bathroom) were not well cared for, and past their useful life. V.E. stated that it was during her site visit in mid-December that she and the Landlord (or agent of) discussed expanding the scope of the refresh to include some new appliances, fixtures, flooring, and cabinets.

V.E. stated that she managed to start sooner than initially planned, and her crews began demolition work around December 31, 2019. V.E. stated that demolition continued into the first week of January 2020, and most of the demolition was complete by around January 9, 2020. V.E. stated that around January 13, 2020, she had a plumber come in to put in a new toilet, fixtures and bathtub. During the same week, V.E. stated that she had cabinets delivered, and installed new carpets and vinyl plank flooring. V.E. stated that they started painting the unit around January 23, 2020, had many of the appliances delivered and installed between January 23, 2020, and January 28, 2020. V.E. noted that there were in the middle of finishing the kitchen, cabinets, and appliances etc. at the time the Tenants appeared to take photos on January 24, 2020. The Landlord's son-in-law agreed that the rental unit was not ready to live in as of that date, as V.E. and her work crews were still working hard to get the unit ready for the Landlord for the end of the month.

V.E. stated that she did not required permits for any of the work, which is why none were taken out with the municipality. The Landlord stated that the only reason the municipality was there was because the Tenants had called in a complaint about the renovations, not because a permit was needed.

V.E. stated that she completed all of the work, except a few minor things such as closet organizers etc. by the end of January 2020. V.E. stated that the unit was cleaned up on January 29, 2020, and she also helped the Landlord's daughter and son-in-law move

from their other house to this rental unit on January 30, 2020, between the hours of 9am and 2pm. V.E. confirmed that the moving company moved all of the Landlord's daughter and son-in-law's items in on January 30, 2020, and they began staying there as of that time. V.E. stated that her last visit to the property was around February 6, 2020, as her work was all done by that time.

The Landlord's son-in-law, A.M., stated that the 30 photos they provided into evidence which were taken after the Tenants moved out in December 2019, are reliable and accurate as to the mess and damage left behind by the Tenants. A.M. stated that they did not get access to the rental unit until the second week of December, and he met with the contractor, V.E., at the rental unit on December 12, 2019. At that time, the parties discussed a larger refresh than was initially planned, based on the poor condition of many of the finishings. A.M. stated that he and the Landlord's daughter, N.M., are still living in the rental unit, and have been since February 1, 2020. A.M. provided copies of their Shaw cable bills which show they had cable services installed sometime in February 2020. A.M. also provided a copy of the invoice for moving costs paid to move them into the house on January 30, 2020.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Tenants have applied for 3 items as part of this application. They are as follows:

- 1) \$2,127.00 – 1 Month's compensation pursuant to section 51 of the *Act* for the Notice they received

Having reviewed this matter, I turn to the following portion of the *Act*:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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.*

In this case, I find the Landlord is obligated to compensate the Tenants, pursuant to section 51 of the Act, in the amount of \$2,127.00, which is equivalent to one month's rent. This amount is compensable upon the Tenants' receipt of the Notice. In this case, the Tenants gave 10 days notice to terminate the tenancy early, which they were entitled to do. The Tenants vacated the property, legally, prior to being able to receive their final month rent, free. As a result, they never received the equivalent of one free month's rent. I note the Landlord does not dispute they owe this amount. I award this amount, in full.

2) \$300.00 – Ceiling Fans

Having reviewed this matter, I find there is insufficient evidence to demonstrate that the Tenants obtained the Landlord's consent to install the ceiling fans in the first place. I note the following Policy Guideline:

*RESIDENTIAL TENANCY POLICY GUIDELINE #1 - Landlord & Tenant –
Responsibility for Residential Premises*

RENOVATIONS AND CHANGES TO RENTAL UNIT

1) *Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.*

Absent a clear explicit agreement that the Tenant had the Landlord's consent to install ceiling fans, I find the Tenants were responsible for returning the ceiling fixtures to their original state (basic light fixtures), prior to moving out. It appears they only removed 2, but left the other 2, due to lack of time. I accept that the Landlord (agent of) and the Tenant had a conversation about whether or not the Landlord would purchase the ceiling fans from the Tenants a matter of days before the Tenants moved out. This conversation is recorded and provided into evidence. I note the Tenants stated that this was a binding agreement for the Landlord to purchase the ceiling fans. However, I do not find the Landlord's response to the Tenant's offer is sufficiently clear. I find the verbiage "yeah.. okay...that shouldn't be a problem... I will call you when I'm back in

town". I find there is ambiguity in the statement "that shouldn't be a problem", which makes it difficult to decipher whether the Landlord had fully accepted the offer and that they had a true meeting of the minds. I find there is insufficient contractual certainty in this regard. I find the Tenants have failed to establish that they had a legally binding agreement to sell the ceiling fans to the Landlord. I find the Tenants have failed to demonstrate that they are legally entitled to this amount. I dismiss this item, in full.

3) \$25,524.00 – 12 months compensation pursuant to section 51(2) of the Act

As stated above, the Tenants stated that they received the Notice from the Landlord on October 24, 2019. A copy was provided into evidence. The Landlord issued the Notice under the following ground (section 49(3) of the Act):

- 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 Landlord listed the effective date of the Notice as December 31, 2019, which I find was compliant with the Act for this type of Notice. The Tenants chose to vacate a month early, as noted above, pursuant to section 50(1), which was an option available to them. However, even though the Tenants legally ended the tenancy prior to the effective date of the Notice, by giving the Landlord 10 days Notice, I do not find this changes the effective date of the Landlord's Notice to End Tenancy. The effective date of the Notice is a date the Landlord puts on the Notice, and is a date which must comply with minimum time requirements, depending on the timing of rent payments, the type of Notice, and the type of the tenancy agreement (fixed term, periodic). This is the date that the Landlord must plan for when following through with obligations relating to the Notice.

Section 49 and 51 of the Act, both speak to the date on the Landlord's Notice, when looking at the issue of compensation, not the date of the Tenant's Notice to end the tenancy pursuant to section 50(1), which may be sooner than the effective date listed by the Landlord. When examining whether or not the Landlord has taken sufficient steps (section 51(2)), within a reasonable time frame, after the effective date of the Notice, I find it is the date which the Landlord listed as the effective date of the Notice which is the date that ought to be considered in terms of assessing whether or not the Landlord acted sufficiently within the "reasonable period" identified under this part of the Act.

The Tenants are now seeking this compensation for a few reasons, but largely because they do not believe the Landlord (or family member) moved in within a reasonable

period of time, and also the Tenants feel the Landlord should have issued a 4 Month Notice for renovations, rather than the Notice they did issue.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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.*

With respect to the Tenants' argument that the Landlord should have issued a 4 Month Notice to End Tenancy for Renovations, rather than the 2 Month Notice for Landlord's Use, I find there is insufficient evidence to demonstrate that the wrong Notice was issued.

In making this determination, I note the Landlord could have issued a 4 Month Notice to End Tenancy to renovate the rental unit, which is an option the Landlord can proceed with if they want to renovate or repair the unit in a manner which requires the unit to be vacant. A 4 Month Notice for renovations, is often used for renovations that are major,

extensive, and known in advance at the time the Landlord is determining which Notice is most appropriate for the situation. I accept that not all of the work the Landlord chose to do was known at the time the Notice was issued. I accept that there may have been some shift in scope after properly viewing and assessing the condition of the unit at the move-out inspection, and after talking with the contractor in mid-December. Further, I do not find the renovations were extensive or major and appear to be more in line with an attempt to refresh the unit to make it more suitable for occupation, after many years of deferred maintenance.

In this case, the Landlord appears to have selected the 2 Month Notice for Landlord's Use because they wanted to change the nature of its use (from rental to family use). In any event, it appears the Landlord selected the most appropriate Notice, given they intended to utilize the rental unit for their own use. Furthermore, whether the Landlord issued a *4 Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit*, or a *2 Month Notice to End Tenancy for Landlord's Use*, the amount of compensation is the same (12 month's rent equivalent) for not following through on the grounds selected on the Notice.

I find there is insufficient evidence to demonstrate that the Landlord should have issued a different type of Notice. However, this matter will be further addressed below when looking at the sufficiency of the Landlord's actions following the effective date of the Notice issued.

I note that section 51(2) states that 12 months worth of compensation is due (unless there are "extenuating circumstances") if the Landlord has failed to do either of the following:

(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.

I turn to the following portion of Policy Guideline #50:

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.

[...]

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 have reviewed the totality of the evidence and testimony from the respective parties, and their witnesses. I note the Landlord's agent and witnesses provided detailed statements and explanations regarding what renovations were completed, and when. The Landlord's contractor attended the hearing and confirmed that she was initially consulted to do minor cosmetic work to the unit (painting/small repairs/cleaning). This work was set to begin in early January 2020, after the effective date of the Notice. However, since the Landlord got possession of the rental unit earlier than initially expected, they decided to meet their contractor at the unit to discuss options. I note the contractor met with the Landlord (agent of), at the rental unit on or around December 12, 2019, to discuss the work that needed to be done before the Landlord (or family members) moved in.

I have reviewed the photos provided into evidence by the Landlord. I note the Landlord called multiple witnesses who attested to the photos being an accurate depiction of the rental unit at the end of the tenancy, in early December 2019. I accept that there were a variety of problems identified in those photos (items left behind, dirt, stains, broken/worn surfaces and building elements). Although the Landlord was likely aware of the age and condition of some of the items in the unit prior to the tenancy ending, I accept that, upon regaining possession of the rental unit after the Tenants moved out, they found additional repairs that they wanted to complete before they moved in.

The Landlord's contractor, V.E., provided clear and compelling testimony regarding the nature, extent, and timing of the renovations she oversaw. She stated that there was no need for permits because the Landlord only replaced existing fixtures, cabinets, flooring, and cabinets. V.E. explained that in mid-December, when she attended the site with the Landlord, the Landlord decided to expand some of their initial requests for a "refresh", beyond just painting and cleaning, given the wear and tear on several items in the rental unit. V.E. stated that she started doing demolition as early as December 31, 2019, and managed to complete all major portions of the work before the end of January 2020. V.E. explained that she replaced flooring, kitchen and bathroom cabinets, appliances, a bathtub, other fixtures, and final painting and cleaning. V.E. stated that she helped the Landlord's daughter, and son-in-law, hire a company to move their belongings in on January 30, 2020, between 9 am and 2 pm. A copy of this invoice was provided into evidence.

I note the Tenants, after vacating the rental unit, were suspicious of the Landlord's intentions, so they kept an eye on the renovations and work that the Landlord was completing. I accept that they presented photos which show the Landlord, on January 24, 2020, was in the midst of renovating and replacing many items on the interior of the home, particularly in the kitchen area. I also note the Tenants, and their witnesses, observed contractor's vehicles at the unit towards the end of January. However, I note the Landlord does not refute that renovations were taking place at this time. The Landlord's contractor also agreed that they were in the midst of replacing cabinets, flooring, and appliances at that time.

Although the Tenants believe that the Landlord may have taken until March 2020 to finish renovations, I find there is insufficient evidence to support this allegation. I note the Tenants took some interior photos on January 24, 2020, and that these photos show kitchen cabinets, flooring, and appliances missing/strewn about. While I accept the Landlord was clearly not living there at that time, I do not find there is sufficient evidence to show the Landlord could not have completed the remaining work within the next

week, as they say they did. There are no further reliable interior photos showing that the rental unit was not in a move-in condition as of the end of January 2020. The Landlord has provided a copy of a cable bill under their name for the month of February 2020 (and onwards), as well as their moving invoice for January 30, 2020. The Landlord also had a witness attend the hearing to state they visited the rental unit in February and saw the Landlord's daughter, and son-in-law, living there.

Having reviewed the evidence and testimony, I do not find the Tenants have sufficiently demonstrated that, as of the end of January, the renovations inside the house were such that the Landlord's daughter, and son-in-law, were not able to move their belongings in, as they and their witnesses attested to. Also, the Tenants have presented no reliable evidence and testimony to demonstrate that the Landlord (daughter/son-in-law) does not reside in the rental unit, currently. I find it more likely than not that the Landlord's daughter and son-in-law moved in at the end of January 2020, and that they continue to reside there to this day, as they and their witnesses have stated. I note that the Landlord herself has not yet moved in, but in order to fulfill the grounds selected on the Notice, the Landlord herself does not need to move in, only one of the listed close family members. In this case, I find the Landlord's daughter and son-in-law sufficiently meet that criteria.

Furthermore, I find there is a temporal aspect which must be addressed regarding whether or not the Landlord took sufficient steps to accomplish the stated purpose, within a "reasonable period" after the effective date of the Notice. The Tenants believe that the amount of time the Landlord (or close family member) took to move in, is not reasonable. The Tenants state that they moved out on December 1, 2019, and the Landlord's daughter/son-in-law did not move in until around 2 months later, at the earliest.

I accept the tenancy ended prior to the effective date that the Landlord listed on the Notice, due to the Tenant's early notice under section 50(1). However, as stated above, I find the effective date indicated on the Notice by the Landlord is the date that must be used when determining whether or not sufficient steps and measures were taken to accomplish the stated purpose within a reasonable period of time.

Having reviewed this matter and the type of Notice the Landlord issued, I do not find the Landlord is precluded from doing repairs to a rental unit, in order to make it more suitable for occupation, prior to moving in. I note that Policy Guideline #50 states that a Landlord cannot renovate or repair a rental unit *instead* of occupying it. However, I find the Landlord is entitled to do cosmetic repairs in order to make the unit more suitable for

their occupation, provided they take actions reasonably quickly and actually move in afterwards.

I note this rental unit had older appliances, cabinets, flooring, and fixtures, many of which had been used for many years by the Tenants. Regardless of whether the repairs were required because of normal wear and tear, or due to some neglect, I find the Landlord is entitled to make updates, prior to moving in, provided it is done within a reasonable time frame. There is insufficient evidence that the renovations and repairs were so extensive that they could not be considered upgrades/repairs which they would reasonably desire prior to moving in.

I accept that the Landlord wanted to refresh the rental unit, prior to moving in, after many years of deferred maintenance. Given the number of items the Landlord chose to refresh prior to moving in, I find the Landlord took sufficient steps and measures within the weeks following the effective date of the Notice. I note a significant amount of work was complete in a matter of weeks, following the end of the tenancy. The Landlord's daughter, son-in-law, and witness, testified that they still reside in the unit, and the Tenants had insufficient evidence to demonstrate that this isn't the case.

In summary, I find the Landlord took sufficient steps and measures to accomplish the stated purpose on the Notice within a reasonable period of time, and I find it more likely than not the Landlord has used the rental unit for at least 6 months in duration, beginning within a reasonable period of time after the effective date of the Notice.

I dismiss this portion of the Tenant's application (item #3).

In summary, I award the Tenants \$2,127.00 for item #1 on their claim, as laid out above. The remainder of the Tenant's application is dismissed, without leave.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partly successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,227.00**. This order must be served on the Landlord. If the Landlord fails to comply

with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: February 16, 2021

Residential Tenancy Branch