



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions and arguments. The parties confirmed that they had exchanged their documentary evidence. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenant testified that his tenancy began on April 16, 2017 and ended on April 15, 2020. The monthly rent of \$1790.00 was due on the first of each month. The tenant testified that he received a Two Month Notice to End Tenancy for Landlords Use of Property on February 4, 2020. The tenant testified that the notice stated that the new owners of the property were going to be moving into his unit. The tenant testified that the landlords should have given him a four-month notice to

end tenancy for renovations as the landlords conducted renovations before moving in. The tenant testified that he had to move under stressful circumstances and that he rented a new unit at a higher rent of \$1950.00. The tenant seeks 12 months of rent as compensation under section 51 of the Act in the amount of \$21,480.00, the rent differential for twelve months in the amount of \$1920.00 and the recovery of the \$100.00 filing fee for a total claim of \$23,600.00.

The landlords gave the following testimony. JM testified that he and his wife purchased the home in November 2019 with the intent of moving in as soon as possible in accordance with giving the proper notice. JM testified that he and his wife were lifelong renters, and this was their first home. JM testified that they wanted to move in as quickly as possible as they were paying \$2980.00 in rent at their present residence and wanted to direct those funds towards their new home. JM testified that when they took possession of the unit, they noticed that the one and only bathroom in the unit looked tired and worn. However, upon further investigation they noticed cracked flooring and a strong smell of mildew and mold.

JM testified that they had a contractor do some exploratory work by opening up the walls and floor. JM testified that the contractor advised them that bathroom was unsuitable for use and that extensive work was required to get the sewer line up to code and that some of the joists were rotten. JM testified that the work required permits. JM testified that there were delays in getting started due to COVID-19, the contractors schedule and the permit process through the City of Vancouver.

LM testified that they spent far more than they had originally thought would be required to obtain this house and that these renovations were unplanned, unwanted, but necessary. JM testified that they worked as quickly as possible including weekends at additional cost to complete the repairs as soon as possible. JM testified that the notice was given as he and his family wanted to move in, not to do renovations. JM testified that the work was completed on November 30, 2020 and that they moved into the home two days later and still reside there.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve months rent payable under the tenancy agreement.

Section 51(3) of the Act addresses the issue before me as follows:

Tenant's compensation: section 49 notice

51 (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.

The tenant submits that the landlords arranged to have the home inspected when they were in the process of purchasing the home and ought to have known the work that was required clearly showing their bad faith. The landlord testified that the home inspector is unable to make a determination of what repairs may be required beneath the surface of drywall such as piping, beams or joists. I agree with the landlords. I find that by having that inspection that didn't identify these issues, the landlords could not have known what repairs were required and assumed that they could issue the Two Month Notice.

The landlords provided a detailed chronology of events that illustrate that they could not have anticipated or foreseen the issues that arose. I find that the landlords were diligent in their efforts and acted expeditiously, taking all reasonable steps to accomplish what was noted on the notice. In addition, the landlords were at the mercy of the permit process and timelines of the City of Vancouver, for which they had no control.

I find that the circumstances described by the landlord clearly meets the definition of extenuating circumstances and as a result, no compensation is required. As I have found that extenuating circumstances apply, the tenant is not entitled to the rent differential he was seeking either, accordingly; I dismiss that portion of his application as well. As the tenant has not been successful in his claims, he is not entitled to the recovery of the filing fee and I dismiss that portion of his application. The tenant has not been successful in any portion of their application.

Conclusion

The tenant's application is dismissed in its entirety 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 18, 2021

Residential Tenancy Branch