Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for November 27, 2020. The hearing was adjourned due to technical difficulties with the teleconference call. As the original Arbitrator assigned was unavailable for this reconvened hearing, and as this matter was not seized by the original Arbitrator, the matter proceeded by teleconference today before myself.

The tenant RL attended with her representative, MB, who is a law student. MB was under the supervision of KM, legal counsel. The landlord attended with DB, who was the property manager for the rental property.

The adjournment decision dated November 27, 2020 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenants also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application and a previous application from the landlord pursuant to section 72.

At the outset of the hearing, MB confirmed that the tenants wished to withdraw the portions of their monetary claim related to the utilities and the security deposit. Accordingly, these portions of the tenants' claims were cancelled.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application and a previous application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties entered into a month-to-month tenancy agreement on April 10, 2018. The tenancy ended in April 2019 after the tenants were served with a Four Month Notice to End Tenancy for Demolition, Repair, or Conversion of a Rental Unit. The monthly rent was set at $1,100.00, payable on the first of the month, with a $550.00 security deposit paid by the tenants. A copy of the tenancy agreement was submitted by both parties for this hearing. The tenancy agreement states that the “rented area includes top floor of residence, surrounding deck and carport”. Both parties confirmed that the arrangement was that the owner and landlord, MK, would retain the right to stay in the basement suite on occasion, but she would not be residing on the property full-time.

On November 28, 2018, the tenants were served with a Four Month Notice to End Tenancy. The Four Month Notice was accompanied by details of the repairs, including a) repair deflected concrete slap under bedroom b) rebuild bedroom as required or relate c) fix drainage and foundation, and d) finish electrical to lower suite stove. The landlord provided an outline with dates for the planned work from March 2019 through to June 2019. The tenants found new accommodation, and moved out pursuant to that Four Month Notice. The tenants provided a statement in their evidentiary materials. The tenants stated that on January 23, 2020 they had received a message through a social medial platform from someone whom was now residing at the rental address, and whom the tenants believed was a new tenant. The tenants submitted a copy of the message from HS, who informed the tenant RL that she received a letter in the mailbox with RL’s name and address on it.

The tenants stated that a permit check was performed on June 2, 2020, and that no permits had been issued for the residence. The tenants also stated that they “drove by the Residence multiple times, including July of 2019, and the last time was May 26,

2020", and they felt that "there were no observable renovations taking place." The tenants took photos in July 2019 to document their observation.

The tenants believe that the renovations or repairs purported to have been completed by the landlord were not extensive nor did the work span a lengthy period of time. The tenants believe that the work did not necessitate the ending of the tenancy. The tenants testified that the landlord had never offered them an alternative to ending the tenancy, such as the ability to reside in the lower suite, or other offers to accommodate the tenants during the repairs.

The tenants are seeking compensation in the amount of $13,200.00 for the landlord's failure to end the tenancy for the purpose allowed under the Four Month Notice. The tenants are also seeking the recovery of the filing fee for this application, as well as a previous application filed. The previous application, which pertained to the tenants' application for monetary compensation, was heard on June 10, 2019, and withdrawn by the tenants with plans to initiate a new application. The tenants filed this new application on August 10, 2020, and are seeking the reimbursement of the filing fee for both applications as they feel that both applications had merit.

The landlord is disputing the tenants' application, and responded that they had to issue the Four Month Notice as the work required would affect the safety of the tenants. The landlord testified that they tried to accommodate the tenants by communicating with them, and giving them plenty of advance notice of the repairs. The landlord was concerned that the work, which involved the shut down of water and electricity for extended periods, would affect the ability of the tenants to live at the residence. The landlord testified that no permits were obtained as they were not required at the time. The landlord testified that they had anticipated that the repairs would take much longer, and as the work affected the structure of the tenants' bedroom, there was no way for the landlord to continue the tenancy. The landlord testified that they did not think to offer the lower suite as an alternative as the lower suite contained only one bedroom and contained the landlord's personal belongings, which the landlord could not readily remove or move. The landlord maintains that the work would still have been too disruptive to the tenants. The landlord testified that the repairs to the supporting wall to the bedroom were in fact completed, and although the landlord anticipated that the work would take four months, the landlord was able to finish on or around May 14, 2019. The landlord submitted detailed evidence in response to the tenants' application, including correspondence between the parties, a description of the work completed, as well as accompanying photos.

The landlord does not dispute that HS had moved in. The landlord testified that HS was a friend who was house sitting and resided in the bottom portion of the home, and not the upstairs portion where the tenants resided. The landlord was unable to provide a specific timeline of when HS resided there, but the landlord believes that HS moved in sometime in latter part of 2019.

Analysis

Section 51(2) of the *Act* reads in part as follows:

> *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*
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> > *(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.*

Residential Tenancy Policy Guideline #2B provides more clarity about the requirements of section 49 of the *Act* when ending a tenancy for the purpose of Demolishing, Renovating, or Converting a Rental Unit for Permitted Use.

As noted by the tenants and their representative, a landlord ending a tenancy under section 49(6) of the *Act* must have all necessary permits and approvals as required by law before they can give the Four Mont Notice. As stated in the Policy Guideline, “if a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals”. If permits are not required for the work, a landlord must provide evidence that the permits are not required “but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy”.

Section 49(8)(b) of the *Act* provides that upon receipt of a Four Month Notice, the tenant may, within thirty days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As stated above, in the case that the Four Month Notice is disputed by the tenants, the landlord would be required to provide evidence of required permits and approvals, and that the work requires the unit to be vacant in a

way that necessitated the ending of the tenancy. In this case the tenants accepted the Four Month Notice and moved out, despite not being presented with any necessary approvals or permits, or evidence that permits are not required but that the work necessitated that the home be vacant in a manner that the tenancy must end. Although the landlord is required to provide proof of permits, and evidence to support the work required, when the Four Month Notice is disputed, the tenants elected to not exercise their option to do so under the *Act* before moving out. As the tenants had agreed to move out instead of disputing the Four Month Notice and good faith of the landlord, I must now consider whether the landlord had complied with the *Act* following the issuance of this Four Month Notice.

Residential Tenancy Policy Guideline #50 speaks to compensation under section 51(2) of the Act in the case that the landlord has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or

- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).

I have considered the evidence and testimony before me in consideration of the relevant legislation and policy guidelines. I find that the landlord did take steps within a reasonable period of the effective date of the Four Month Notice to accomplish the stated purpose for ending this tenancy. I find that that the landlord had demonstrated that extensive repairs were required that affected a structural wall in the tenants' rental unit, and that the repairs would have a significant impact on the tenants' safety and access to essential service or facilities such as water and electricity for a prolonged period of time. I find that the landlord was forthright about the fact that the work was completed within a shorter period of time than anticipated, and that permits were not required.

I have considered the tenants' observations, as well as the undisputed fact that HS had moved in. I find that the landlord provided a credible explanation for why HS was there, and I am satisfied that the landlord did not re-rent the tenants' rental suite to HS. Although the tenants' observation was that the landlord did not undertake extensive renovations or repairs, I am satisfied that the landlord had provided evidence to support that they have, and that these repairs were extensive enough to require that the tenants vacate the rental unit. I find that it would have been likely that the tenants' safety and ability to access essential facilities would have been significantly impacted and for an extended period of time. Although the landlord did not offer the tenants an alternative

before issuing the Four Month Notice, I accept the landlord's explanation that the tenants' rental unit is significantly different and larger than the lower suite, and that the landlord was not in a position to prepare the lower suite for the tenants in a manner suitable for occupancy by the tenants. Despite the tenants' concerns, I find that the tenants did not exercise their option to dispute the Four Month Notice before accepting the Four Month Notice and moving out. For the purpose of determining whether the tenants are entitled to compensation under section 51(2) of the *Act*, I find that the landlord fulfilled their obligations within a reasonable amount of time after the effective date of the Four Month Notice. Accordingly, I dismiss the tenants' application under section 51(2) of the *Act* without leave to reapply.

The tenants also requested the recovery of the $100.00 filing fee for this application, as well as the previous application that was withdrawn. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I find that the tenants had withdrawn the first application, and as I find that the tenants were not successful with this application, I find that the tenants are not entitled to recover the $100.00 filing fee for either application. The tenants must bear the cost of both filing fees.

Conclusion

The tenants withdrew their monetary claims related to the security deposit and the utilities. I make no findings on the merits of these matters. Liberty to reapply is not an extension of any applicable limitation period.

The remainder of the tenants' 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 16, 2021

Residential Tenancy Branch