



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for, a monetary order that is the equivalent to 12 months rent, pursuant to section 51 of the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed that they were not making any unauthorized recording of the hearing, in compliance with Rule 6.11.

At the outset of the hearing, the parties agreed that the landlord's agent named in the tenant's application should be removed from the style of cause. Therefore, I have removed the named agent RMS from the style of cause.

Issue to be Decided

Is the tenant entitled to a monetary order pursuant to section 51 of the Act?

Background and Evidence

The tenancy began 20 years ago. Current Rent in the amount of \$1,400.00 payable on the first of each month. The tenancy ended March 31, 2020.

The current landlords obtained the property in 2019, through the estate of the deceased landlord, their father.

The parties agreed that the tenant received a Two Month Notice for Landlord's Use of Property (the "Notice") issued on January 6, 2020, with an effective vacancy date of March 31, 2020. The tenant accepted the Notice and vacated.

The reason stated in the Notice was that 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 intent of the Notice was that the landlords' son was to reside in the premise.

The tenant testified that they do not disagree that the landlords had the right to make the premise suitable for their son; however, they should have received a four-month notice to end the tenancy due to renovations. The tenant stated that in 2016 they had an agreement to mutually end the tenancy based on an extensive renovation; however, that agreement was cancelled because the landlord did not want to do a renovation at that point in their life.

The tenant testified that the landlord's son in this case did move into the premise; however, they believe it was sometime in December 2020, which is over eight months after the tenancy ended and is unreasonable and this was after the repairs and renovation was completed. The tenant stated that the landlords did a major renovation to the rental unit.

The landlord testified that the rental unit was not in good shape when they took possession of the property in 2019. The landlord stated that they had to make necessary repairs to the interior, such as sand down the old wood floors, install new cabinets because the cabinets were so old, falling a part and the doors were missing.

The landlord testified that the rental unit had also been smoked in and the ceiling was heavily coated with smoke. The landlord stated because of the smoke damage, they would have had to have the ceiling scraped to remove the old texture, which became an asbestos issue and they decided the best solution was to just cover the existing ceiling with new drywall. The landlord stated they had to renovate the bathroom because the interior of the walls was damaged by water leaking and the old fixtures replaced. The landlord stated other things had to been completed such as the mortar in chimney was failing and the bricks were falling in.

The landlords testified that they had to do the repairs to make it suitable for their son and that it did not make sense that he would live there while the repairs were completed because he would be in the way of the work being completed.

The landlord testified that the repairs took longer than expected because the contractors kept failing to show up for work due to Covid restrictions and they had to try to do some of the work themselves and was at the premise on a daily basis; however, due to their age and skills they had to rely upon the contractors to do the skilled work.

The landlord testified that they are not responsible for any prior notices that the previous deceased landlord gave to the tenant in 2016.

The landlord testified that the tenant was not paying the rent of \$1,400.00 as they had rented a portion of the premise and were collecting rent. The landlord stated this amount should be reduced from the monthly rent paid by the tenant.

The tenant argued that the landlord knew of the condition of the rental unit and if it was good enough for them to live in, then it should have been good enough for their son. The tenant stated this was a full renovation including the basement. The tenant does not dispute that there were delays in the contractors due to Covid restriction, as they have suffered the same experience.

The tenant responded that they were renting a portion of the premise out. And they believe it is fair and reasonable to reduce that amount paid of \$550.00 from the monthly rent and any compensation should be based on the amount of \$820.00 for the total amount of \$9,840.00.

I should note that the parties gave evidence on work that was completed to the exterior of the premise such as painting and the yard maintenance, such as tree cutting. I have not considered any of this evidence, because this does not prevent the premise from being used for the stated purpose.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant is seeking compensation pursuant to section 51(2) of the Act, an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

The evidence of the tenant was that they should have received a Four Month Notice to End Tenancy for Renovation and the Notice was not issued in “good faith” because in 2016 the previous landlord had ended the tenancy for this reason, which was then later cancelled by consent.

However, if the tenant truly felt the Notice was not issued in “good faith” they could have disputed the Notice under section 49 of the Act, and the “good faith” requirements would be considered. However, the Notice was not disputed.

The only issue I must consider at today’s hearing is did the landlords use the premise for the stated purpose within a reasonable time, pursuant to section 51(2) of the Act, and if not did the landlords have extenuating circumstances, in my opinion, that prevented them from using the premise for the stated reason, pursuant to section 51(3) of the Act.

The Notice was given for the reason that the premises was to be used by the landlord’s son to reside. However, repairs and renovations to the premise were made prior to the landlord’s completing the stated reasons.

The Residential Tenancy Branch Policy Guideline 50, in part reads,

Accomplishing the Purpose/Using the Rental Unit Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. **A landlord cannot renovate or repair the rental unit instead.** The purpose that must be accomplished is the purpose on the notice to end tenancy.

In this case, I find the landlords had to have known or should have known

the state of the rental unit that would require repairs, such as redoing the ceiling, refinished the floors, replacement of kitchen cupboards, renovating the bathroom and other repairs that came to light, such as the mortar in the chimney failing.

While I accept the landlords did not want their son to live in the premise while the repairs were made; however, that was their personal choice because if it was unlivable for their son to live in the premise that would mean the repairs were so extensive that vacant possession was needed. I find the landlords should have issued a Four Month Notice to End Tenancy for Renovations. Rather they issued the Notice that is before me. Therefore, I find the landlords did not accomplish the reasons stated within a reasonable time.

While I accept the renovations and repairs were delayed due to circumstances out of the landlord's control, which was the contractors were not attending due to Covid restriction; however, that would only be relevant had the landlord issue a Four Month Notice to End Tenancy for Renovations.

Based on the above, I find the tenant is entitled to compensation pursuant to section 51 of the Act that is the equivalent to 12 months rent at the agreed upon rent of \$820.00. Therefore, I find the tenant is entitled to compensation in the amount of **\$9,840.00**, I grant the tenant a formal order pursuant to section 67 of the Act. This order may be enforced in the Provincial Court and enforced as an order of that court. The **landlords are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenant's application is granted.

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: May 12, 2021

Residential Tenancy Branch