Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNECT, FFT

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant J.B. and the landlord's representative (the "representative") 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 representative was personally served with the tenants' application for dispute resolution on February 8, 2021. I find that the landlord was served in accordance with section 89 of the *Act.*

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The representative testified that the tenants were each served with the landlord's evidence on May 11, 2021. The representative provided the Canada Post tracking numbers for the above mailings which are located on the cover page of this decision. The representative testified that the packages were returned to sender. The Canada Post website states that the landlord's evidence packages were mailed on May 13,

2021 and were available for pick up on May 14, 2021 but were ultimately returned to sender because they were not picked up.

Tenant J.B. testified that she did not think to check her mailbox and that she did not see the Canada Post pick up slip until today and that they were already gone when she went to pick them up. Tenant J.B. testified that the landlord's evidence should not be considered because she did not receive it.

Based on the Canada Post website, I find that the representative served the tenants with the landlord's evidence via registered mail on May 13, 2021. I find, on a balance of probabilities, that the representative made an inadvertent error when he testified that the packages were sent on May 11, 2021. I find that the tenants were served in a method approved of under section 89 of the *Act* and that the tenants were deemed served with the landlord's evidence on May 18, 2021, five days after their mailing, in accordance with section 90 of the *Act.* I find that it was the tenant's reasonable obligation to check the mail prior to this hearing and the failure of the tenants to do so does not affect the landlord's compliance with the service requirements of the *Act.* I admit the landlord's evidence for consideration.

Preliminary Issue- Amendment

The tenancy agreement states that the landlord is the property management company listed on this application for dispute resolution as the landlord. This application also lists the personal name of the representative as a landlord. The representative testified that he is an employee of the landlord company and should not personally be named as a landlord. The tenant testified that the representative should be named because he is an agent of the landlord.

Section 1 of the *Act* defines landlord as follows:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a)the owner of the rental unit, the owner's representative or another person who, on behalf of the landlord,
>
> (i)permits occupation of the rental unit under a tenancy agreement, or
>
> (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b)the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c)a person, other than a tenant occupying the rental unit, who

(i)is entitled to possession of the rental unit, and

(ii)exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d)a former landlord, when the context requires this;

I find that the property management company listed as the landlord on the tenancy agreement and this application for dispute resolution, is an agent of the owner of the subject rental property and is properly named in this application. I find that the representative is an employee of the agent and should not be personally named. Pursuant to section 64 of the *Act*, I amend the tenant's application to remove the representative's name.

Issues to be Decided

- Are the tenants entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
- Are the tenants 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 March 1, 2014 and ended on September 1, 2020 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). Monthly rent in the amount of $973.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant disputed the Two Month Notice and the Two Month Notice was upheld in a Residential Tenancy Branch Decision dated August 18, 2020, and the landlord was issued an Order of Possession. The file number for the previous arbitration is on the cover page of this decision.

Both parties agree that the Two Month Notice was served on the tenant so that the owner of the subject rental property's son could move in.

The tenant testified that she is seeking 12 months' rent compensation because the owner's son never moved into the subject rental property.

The representative testified that the owner's son has not moved into the subject rental property because after the tenant moved out the landlord discovered that major repairs were required. The representative's written submissions state in part:

> ….On inspection of the home in early September, the following was found;
>
> - The main support under the upper floor has been destroyed by termites
> - The roof trusses were under sized and caving in
> - There was little to no insulation in the exterior walls
> - The east wall of the addition was water logged and was rotten
> - The plumbing was poorly done and had to be replaced
> - Electrical wiring was not up to code and had to be replaced
> - The windows were not up to code and were replaced.
>
> The owner's son's budget was limited for the rebuild as a result a lot of the work was done by the owner's son.
>
> An Engineering firm was hired and the house was redesigned and rebuilt according to the engineer's specifications (tab #5).
>
> A building permit was taken out from the [City]. All inspections have passed with the exception of the stairs to the downstairs (tab #6)….

The representative testified that the owner's son will move into the subject rental property as soon as the construction is complete. The representative testified that during the tenancy the tenant complained about the cost to heat the subject rental property which is because there was almost no insulation.

Analysis

Section 51 of the *Act* states:

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.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Residential Tenancy Policy Guideline #50 states:

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.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days….

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….

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Both parties agree that at the time of the second hearing, June 3, 2021, the owner's son has not moved into the subject rental property. The tenant moved out in accordance with the Two Month Notice approximately 9 months ago. I find nine months is not a reasonable period of time to take steps to move in. I also find that the rental unit has not been used for the purpose stated on the Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice as the owner's son has not yet moved in. I find that the landlord has not complied with the reason for ending the tenancy stated on the Two Month Notice and has instead completed a major renovation requiring permits.

Pursuant to section 51(2)(b) and section 51(3) of the Act I find that unless the landlord can prove that extenuating circumstances prevented the landlord from completing the reasons for the eviction set out in the Notice, the tenant is entitled to an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Extenuating Circumstances

The representative testified that the landlord discovered issues with the property that required repair and that these were discovered after the tenant moved out. The representative also testified that the tenant complained of the cost of heating in the winter. I find, on a balance of probabilities, that the landlord was aware of pre-existing issues with the subject rental property but did not investigate the issues until after the tenant moved out.

I find that it would have been reasonable for the landlord to have had an inspection completed to understand the scope and nature of all the repairs required before a notice to end tenancy was served on the tenants. Such an inspection could easily have been undertaken before the Two Month Notice was served on the tenants.

I find that the landlord did not exercise the required due diligence in determining if the tenant should receive a Four Month Notice to End Tenancy for Renovation, Repair or Conversion of a Rental Unit or the Two Month Notice to End Tenancy for Landlord's Use of Property.

I find that the extensive nature of the required repairs to the subject rental property does not constitute an extenuating circumstance under section 51(3) of the *Act* as the landlord failed to take reasonable steps to understand the extent of the renovations required to make the property habitable for owner's son. As noted above in Residential

Tenancy Policy Guideline #50, 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. I find that the landlord has renovated the subject rental property and a close family member has not moved in.

Pursuant to section 51(2) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to 12 months' rent, in the amount of $11,676.00

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenants in the amount of $11,776.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 03, 2021

Residential Tenancy Branch