



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

On February 16 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with D.C. attending as an agent for the Landlord. The Tenant attended the hearing eight minutes after the hearing was scheduled to commence. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord on or around February 25, 2021 and D.C. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served this package. As such, the Tenant’s evidence was accepted and considered when rendering this Decision.

D.C. advised that the Landlord’s evidence was served to the Tenant by email because the Tenant provided the dispute address as the only address for service. This evidence

was sent on June 24, 2021. The Tenant confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. As such, this evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started approximately 14 years ago and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on September 24, 2020 after being served the Notice. Rent was established at \$1,076.00 per month and was due on the first day of each month. A security deposit of around \$400.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

All parties also agreed that the Tenant was served with the Notice on August 20, 2020. The reason the Landlord checked off on the Notice was because "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)." As well, the Landlord checked off the box indicating that "The child of the landlord or landlord's spouse" would be occupying the rental unit. The effective end date of the tenancy was noted as November 1, 2020 on the Notice.

The Tenant advised that he moved into the rental unit 14 years ago and there were a number of ongoing repair issues that the Landlord neglected to fix. However, it is his position that the Landlord conducted substantial renovations to the rental unit before the Landlord's daughter moved in on November 1, 2020. A new toilet was installed, new flooring was laid, the bathroom was completely overhauled, and a new electrical panel was installed. He referenced his documentary evidence and that of the Landlord's to support his position that renovations were conducted.

He submitted that he went to the property to collect his mail two weeks after he gave up vacant possession of the rental unit and his friends there advised him that the Landlord had been undertaking renovations to the rental unit. He did not submit any documentary evidence to support this position.

He read an excerpt from a website where he stated that in a situation where the Landlord serves this type of Notice, the Landlord must occupy the rental unit and cannot repair or renovate the unit instead. It is his belief that this Notice was served so that the Landlord could upgrade the rental unit and then rent it later for substantially more rent.

As it is his belief that the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice, he is seeking compensation in the amount equivalent to twelve months' rent (**\$12,912.00**) pursuant to Section 51(2) of the *Act*.

D.C. advised that the Landlord was never informed of repairs required by the Tenant and that the Landlord actually reimbursed the Tenant for some repair costs despite the Tenant not being able to provide receipts. She confirmed that the rental unit required upgrades due its age, and because of the manner with which the Tenant lived there without advising the Landlord of necessary repairs. She referenced text messages from the Landlord's daughter that highlight some of the unknown deficiencies in the rental unit at the end of the tenancy. She submitted that the "facelift" would have been required had the unit been rented to another tenant.

She stated that the Landlord's daughter took occupation of the rental unit in mid-October 2020 and conducted the upgrades while she lived there. She confirmed that the bathroom was updated and that an electrical panel was installed, but the rest of the rental unit was largely the same. This is confirmed by the similarities in the Tenant's and the Landlord's pictures, and these changes were to make the rental unit livable for the Landlord's daughter. She referenced the documentary evidence submitted to demonstrate that the Landlord's daughter took occupation of the rental unit in mid-

October 2020, that the upgrades happened while she occupied the rental unit, and that her address, and that of her boyfriend, had been changed to the rental unit address. She advised that the Landlord's daughter has maintained occupancy of the rental unit since mid-October 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on August 20, 2020 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) 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*

(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.*

I also note that the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

Regarding this situation, I find it important to emphasize that Section 51(2)(a) states that the 12 months' compensation is awarded if "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." I also find it important to note that the effective date of the Notice was November 1, 2020.

When reviewing the totality of the evidence before me, I have before me a sworn affidavit indicating that the Landlord's daughter took possession of the rental unit on September 25, 2020, that she started re-painting the rental unit, and that she then slept in the unit as of early October 2020. As well, throughout this month, some repairs were conducted. Furthermore, she changed her address on November 1, 2020 to that of the rental unit.

While it is the Tenant's position that the Landlord substantially renovated the rental unit, I am not satisfied that the Tenant has provided sufficient or compelling evidence of such that would outweigh the Landlord's sworn affidavit and accompanying documentary evidence. Furthermore, I accept that some level of basic repair or upgrade could be required, and would be acceptable, when turning over a rental unit, especially when a tenancy has lasted as long as this particular one.

In addition, and most importantly, the undisputed evidence is that the Landlord's daughter occupied the rental unit in mid-October 2020 and the effective date of the Notice was November 1, 2020. As the *Act* requires the purpose to have been fulfilled by the effective date of the Notice, and as the Landlord's daughter took occupation of the

rental unit prior to the effective date of the Notice, I am satisfied that the Landlord has complied with the *Act*.

As such, I find that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: July 7, 2021

Residential Tenancy Branch