



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On March 14, 2021, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenants and Landlord attended the hearing. The Landlord is the purchaser of the residential property who directed the previous owner to end a tenancy via a Two Month Notice to End Tenancy for Landlord’s Use of Property dated November 16, 2020. Under sections 49 and 51 of the Act, obligations of a Landlord flow from the issuance of a notice to end tenancy and in this Decision the purchaser of the home is referred to as the Landlord.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have exchanged the documentary evidence before me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenant agreed that the tenancy began June 15, 2019 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. The Landlord and Tenant agreed that rent in the amount of \$2,250.00 was due to be paid to the Landlord by the fifteenth day of each month. The tenancy ended on January 15, 2021 after the Tenants received a notice to end tenancy from the original Landlord.

The Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 16, 2020 ("the Two Month Notice"). The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy within the Two Month Notice is:

All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Two Month Notice provides the name and address of the purchaser who is the respondent in attendance at this hearing.

Money Owed or Compensation for Damage or Loss Under the Act

The Tenants are seeking compensation in the amount of \$27,000.00 which is twelve months of rent paid under the tenancy agreement.

The Tenants stated that after the tenancy ended, they continued to go to the rental property to retrieve mail. The Tenant stated that he noticed that nobody had moved into the residential property and the house was being gutted. He stated that the windows were gone; the doors were gone; and it was down to studs. The Tenant stated that there was no furniture other than a big desk that had plans for renovations on it.

The Tenants provided photographs of the home taken in February 2021 and April 2021 showing that the home is vacant and under renovation.

The Tenant stated that during the tenancy they had received text messages that the purchaser wanted to come into the house with an architect.

In reply, the Landlord stated that he intended to move in and perform some cosmetic renovations; however, he discovered that there were too many issues with the 55-year-old house.

The Landlord provided testimony regarding the state of repair of the house which includes the following:

- Presence of mice
- Chipmunks living in the roof
- Rotten deck
- Heating system not working properly
- Copper pipes leaking
- Electrical wiring issues
- Presence of asbestos.
- Poor insulation

The Landlord stated that he realized the house was not liveable and he did not want to live there while renovations were ongoing due to the covid pandemic.

The Landlord testified that he placed some of his possessions in storage and arranged to live elsewhere. The Landlord testified that he approached the city for work permits for the plumbing and electrical wiring and had to wait three months for permits.

The Landlord stated that because of covid he did not perform an inspection of the upper unit of the home prior to purchasing the home. He testified that he did enter the basement area prior to purchasing the home; however, he was not able to access some areas.

The Landlord, Ms. S.K. stated that her husband is a builder and that they did not see the inside condition of the house prior to purchasing it.

The Landlord stated that the renovations are still ongoing and that he wants to move into the home at the end of this month.

The Tenants replied that during the tenancy they never received a proper written notice of entry from the Landlord for the purpose of the purchaser completing an inspection of the home.

Analysis

Section 51 (2) of the Act provides:

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 Compensation for Ending a Tenancy provides the following information with respect to extenuating circumstances:

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on 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 for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

Policy Guideline #50 also provides direction on what is a reasonable period for a landlord to occupy a residential unit. The Guideline provides the following:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. 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, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

With respect extenuating circumstances the policy guideline provides the following:

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

Based on all of the above legislation and policy guidelines, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 51

I find that the Purchaser directed the original Landlord to issue the Tenants the Two Month Notice and selected that the purchaser or a close family member intended in good faith to occupy the rental unit.

I find that the Tenants accepted the Two Month Notice from the Landlord and moved out of the rental unit on January 15, 2021. The effective date of the Two Month Notice is January 22, 2021.

I find that as of the date of this hearing the Landlord has not occupied the residential home. The residential home has been vacant for over six months. I find that the Landlord has failed to use the rental unit for the stated purpose within the Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

In accordance with section 51(2) of the Act, I find that the Landlord must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Extenuating Circumstances

I have considered whether or not there are extenuating circumstances present that stopped the Landlord from occupying the rental unit and which may excuse the Landlord from paying compensation. I find that circumstances such as fire or death, where it would be unreasonable and unjust for a landlord to pay compensation are serious and/ or significant circumstances. I find that the circumstances that need to be present to excuse a landlord from paying compensation need to be significant.

I have considered the Landlords' submissions that he was not able to fully inspect the rental unit and that he found the rental unit to be unliveable. I am mindful that the rental unit appears to be liveable since the Tenants were living in the home for 18 months prior to the purchase of the home. I am mindful that the Landlord's wife stated that her husband is a builder, and I also note that the Tenants testified that the Landlord wanted to enter the home with an architect while the Tenants were still living there. In addition, the Landlord had access to the home to inspect the exterior of the house and parts of the basement. It is reasonable to expect that the Landlord would have had access to the decks and the wiring and plumbing in the basement. It appears to me that the Landlord knew the condition of the home and had plans to renovate prior to January 15, 2021 when the Tenants vacated the rental unit. I am not convinced that the Landlord suddenly found too many issues present which prevented him from occupying the unit.

I find that the Landlords failure to conduct an inspection of the upper rental unit does not meet the threshold of being an extenuating circumstance in accordance with the intention of the legislation and the policy guideline that would make it unreasonable and

unjust for a landlord to pay compensation. While I accept that covid 19 is a real concern, the Landlord issued the Two Month Notice to occupy the rental unit and not for the reason of renovation. In this specific case, I find that the Landlords decision to not live in the home while the unit was renovated, due to covid 19 concerns, is not an extenuating circumstance that would make it unreasonable and unjust for the Landlord to pay compensation.

The legislation does not permit me authority to vary the amount of compensation for a breach of section 51(2)(a) of the Act. I find that the Landlord owes the Tenants \$27,000.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$27,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord breached section 51(2) of the Act by not using the rental unit for the purpose stated within the Two Month Notice within a reasonable period of time. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The circumstance submitted by the Landlord as an excuse from paying compensation to the Tenant does not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and policy guideline.

The Tenants are granted a monetary order in the amount of \$27,100.00.

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: August 19, 2021

Residential Tenancy Branch