



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant, filed under the Residential Tenancy Act (the “Act”) seeking compensation pursuant to section 51 (2) of the Act and to recover the cost of the filing fee.

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. Both parties confirmed under affirmation that they are not recording this hearing in compliance with Residential Tenancy Branch Rules of Procedures 6.11.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

At the outset of the hearing both parties indicated that they are representing their aging parents. Both parties stated that they have been acting as their parent’s agent for an extended period of time.

Issue to be Decided

Is the tenant entitled to compensation pursuant to section 51(2) of the Act?

Background and Evidence

The parties agreed that the tenancy commenced in 2003. Rent in the amount of \$600.00 was payable each month. The tenancy ended on September 1, 2020.

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished 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.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

The parties agreed that the tenant was served with a Two Month Notice for Landlord's Use of Property (the "Notice"), issued on June 30, 2020.

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 landlord submits in their written statement that three family members purchased the property in 1971, which was an old cabin that they used for summer family vacation retreat. The landlord submits that in 2003 because they were away travelling outside of Canada they rented the cabin to the tenant at a low rent, in exchange for yard work, cabin maintenance and repairs.

The landlord testified that they have always used a portion of the property for their own use as they would camp on the property, during the summer months.

The landlord testified that when they issued the Notice they knew that they would have to make some minor improvements to the cabin (rental unit), such as paint and other minor repairs.

The landlord testified that when they took possession of the rental unit it was found to be in a horrible condition as there was a large hole in the drywall in the bedroom and mould on the walls and there were other concerns with the premises.

The landlord testified that they hired a consultant company to look at the premise and they had determined that the floor in the mechanical room has deteriorated, the toilet in the bathroom was no longer secure as the wood had deteriorated under the flooring, that the chimney was cracked and pulling, and that that there was asbestos been behind the wall had been exposed due to the tenant putting a large hole in the drywall. The landlord stated that the recommendation was that the residence should not be occupied until the repairs made. Filed in evidence is a copy of the assessment report dated September 22, 2020.

The landlord testified that one of the owners did move some of their belongings into the premises in November 2020; however, at that time they discovered the septic field was no longer working, as the plumbing fixtures would not drain. The landlord stated that they had called in a septic consultant and they were told that the septic field tiles are broken because the tenant had parked their trailer on the field. The landlord stated that financially they cannot afford to replace the septic system at this time. However, there is another holding tank that they use for their travel trailer.

The landlord testified that they have always use the property to live for several months each year and that they are still using the property and parts of the cabin as it contains some of their belongings. However, due to the unexpected damage and the septic field failure they have not been able to fully use the rental unit (cabin).

The tenant's agent agreed that the landlords have always use a portion of the property for their own use. The agent stated that the majority of the issues with the premise was from lack of repairs and maintenance of the owners. The agent stated that the landlord has always been aware that there was a problem with the septic field due to the high-water table.

The landlord argue the issue was not with the high-water table. The issue is with the septic field tiles that were broken due to the tenant parking their trailer on it.

Analysis

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

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.*** **[my emphasis]**

(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.

In this case, the evidence was that after the tenant had vacated the rental unit, an assessment of the premises was completed. I have reviewed the assessment and most of the repairs appear to be from lack of maintenance and repairs, which was the landlord responsibility to do throughout the tenancy. Even if the agreement was for the tenant to do maintenance, it was the landlord's responsibility to monitor the premises. The landlord should have known or ought to have known the premise required more than just basic repairs.

However, I am satisfied that the landlord was unaware of the mould in the bedroom or the large hole in the drywall which opened the wall containing asbestos, which in part made it unsafe to occupy until repaired. I find it reasonable that the landlords delayed using the premise until it was safe to do so.

In November 2020, one of the owners had moved some of their furniture into the rental unit, only to discover that the septic field was no longer working. While I accept there has always been an issue with the septic field due to the high-water table; however, this was not due to the water table, as the septic tiles were damaged from what is believed to be from the tenant parking their trailer on the field. While I accept this cannot be proven as it could simply be from deterioration over time. However, I am satisfied the septic field was not functional leaving the kitchen and a bathroom unusable until the septic field is replaced.

I am satisfied based on the above that the landlords are using the property for their own use as living accommodation when on vacation and are currently staying in their travel trailer. The evidence of the landlord was in November 2020, they had moved some personal property into the rental unit. I am satisfied that this is not a violation of the Act because the premise is not vacant and absent from any use.

There is no requirement that the owners must reside there on a full-time basis as they are entitled to use the premise as their secondary living accommodation and use on a part time basis. In addition, the landlords are entitled to reclaim the space and use it as an extension of their current living accommodation, which in this case they are using it as it contains their furniture.

Furthermore, in my opinion, extenuating circumstances have prevented the landlords from fully occupying the rental unit as there were unforeseen issues with asbestos and the failing septic system. Therefore, even if I had found a breach of the Act, I would have excused the landlord from paying the tenant any amount that would be required under section 51(2) of the Act.

Based on the above, I dismiss the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's application 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: September 08, 2021

Residential Tenancy Branch