



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The respondent confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the respondent duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2018, and ended on February 15, 2021 after the tenants were served with a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of a Rental Unit. Monthly rent was set at \$1,200.00, payable on the first of the month. The tenants were returned their security deposit of \$600.00 at the end of the tenancy.

The landlords had purchased the property from the previous landlords in 2020. The landlords served the tenants with a 4 Month Notice to End Tenancy on October 30, 2020, for an effective date of March 1, 2020. The tenants were re-served with a new 4 Month Notice on November 24, 2020 with an effective date of March 31, 2020, which replaced the previous notice as the previous notice did not contain the renovation details. The tenants elected to exercise their option to move out on an earlier date, and moved out on February 15, 2021, and received the required 1 month's rent as compensation for the 4 Month Notice. The tenants filed this application for compensation as they believe that the landlords failed to fulfill their obligations under the *Act* by re-renting the home before the landlords had started to undertake the intended renovations.

The landlords provided a written response in their evidentiary materials, and accompanying timeline. The landlords submit that the main reason for why they had served the tenants with the 4 Month Notice was that they required the rental unit to be vacant so they could perform extensive repairs in order to properly soundproof the home. The landlords testified that this was an ongoing issue, which the landlords were informed about by the previous owners of the home. The landlords testified that they had witnessed themselves the lack of soundproofing between the upstairs and lower suite, and that they received numerous complaints about the noise, even after the 4 Month Notice was served. The landlords testified that it was impossible to perform the soundproofing while the tenants were residing in the rental unit as the debris and dust would be extensive. The landlords testified that there were other required repairs as well but that this was the main reason for serving the tenants with the 4 Month Notice.

The landlords confirmed that the ceiling was not removed until September 9, 2021, and that they did re-rent the rental unit on a temporary basis from March 22, 2021 to August 28, 2021. The landlords testified that due to extenuating circumstances, they had to

delay the repairs, and decided to assist an acquaintance who had recently sold their townhouse, and was looking for temporary accommodation for a couple of months starting in March 2021. The landlords testified that due to a Covid-19 outbreak at BR's workplace, BR's company had to stop work on its commercial job sites, which caused the landlords' concern over the cost of the renovation. The landlords had decided at this point to put the full renovation on hold until the situation was more stable, and fix the immediate problems first. The landlords submit that this happened after the tenants had already elected to move out.

The landlords testified that that they ultimately fulfilled their obligations by performing the renovations, which had yet to be completed at the time of the hearing. The landlords testified that due to budget constraints, BR had to undertake much of the work himself, and anticipate that the work would be completed sometime in November or December 2021. The landlords feel that compensation is not justified as it was due to extenuating circumstances that the work was delayed, and that their intention all along was to end the tenancy only for this reason. The landlords testified that they had decided to assist MF, who had originally only planned on a 2 month occupancy, which had to be extended until the end of August as MF had contracted Covid-19, and the move-in date for their new home was delayed. The landlords submit that MF had to endure the noise transfer between the floors while living there, but was awaiting the completion of their new home that was being built.

The landlords submitted in evidence receipts for the items purchased for the renovation, as well as invoices for the new furnace and hot water tank, and driveway paving. The landlords submit that in addition to the soundproofing issue, the driveway also required repairs for safety reasons.

The tenants feel that the landlords had ulterior motives in ending the tenancy, and the renovations and repairs were not required nor necessary, and noted that the landlords did not perform inspections or take measurements before serving them with the first 4 Month Notice. The tenants do not dispute that they did complain about noise, but that this was due to the behaviour of the upstairs tenants, and not due to lack of soundproofing. The tenants testified that they did not have issues with the previous tenants who had occupied the rental unit upstairs. The tenants testified that the tenants would party until 4 or 5 a.m., which was the cause of the majority of the disturbances. The tenants testified that the previous owners had installed new flooring in 2018.

The tenants feel that although the landlords did undertake renovations, that these renovations were not necessary, and not the main reason for why the landlords had ended this tenancy.

Analysis

Section 51.4 (4) and 51.4(5) of the *Act* states that:

(4) Subject to subsection (5), the landlord 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 the landlord does not establish that the renovations or repairs have been accomplished within a reasonable period after the effective date of the order.

(5) The director may excuse the landlord from paying the tenant the amount required under subsection (4) if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the renovations or repairs within a reasonable period after the effective date of the order.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords had re-rented the suite after the tenants had moved out pursuant to the 4 Month Notice to End Tenancy. The landlords also do not dispute that there was a delay in starting and completing the renovations, but testified that this was due to extenuating circumstances. The tenants are entitled to apply for compensation under section 51 of the *Act* if a landlord ended the tenancy under section 49 of the *Act*, but does not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy. In this case, the question about the tenants' entitlement to compensation can be determined by answering two questions: 1) did the landlords perform the intended renovations within a reasonable amount of time? 2) if not, were there extenuating circumstances that prevented the landlords from doing so as the term "extenuating circumstances" is contemplated under the relevant legislation?

Residential Tenancy Policy Guideline #50 provides some clarity about what can be considered a reasonable period, and what the landlords' obligations are in terms of accomplishing the stated purpose under section 49 of the *Act*. I note that although the legislation had recently changed in terms of what is required before a landlord may end a tenancy under section 49(6) of the *Act* in order to demolish, renovate, or convert a

rental unit, the obligations of the landlords to fulfill their obligations, and the compensation for not doing so, remain the same.

Policy Guideline #50 states that “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.”

Policy Guideline #50 also addresses the landlord’s obligations to use the rental unit for the intended purpose as stated on the 4 Month Notice:

“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.”

I find this portion of the policy guideline especially relevant to this case as the landlords had noted on the 4 Month Notice that the reason for ending the tenancy was to perform renovations, and although the landlords did undertake renovations after the tenancy had ended, the landlords had re-rented the suite for a short term to another tenant shortly after the tenants had moved out, and within six months of the effective date of the 4 Month Notice. The landlords did provide an explanation for this, citing extenuating circumstances.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

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*

In this case, although I sympathize with the landlords that the circumstances may have changed from the time when they had served the tenants with the 4 Month Notice, and when the tenants had moved out, such as the change in BR's employment circumstances on February 25, 2021, I do not find that the reasons provided by the landlords for delaying the renovations, and re-renting the home, even for short period of time, are sufficient to support that there were extenuating circumstances that prevented the landlords from carrying out their obligations as set out in the *Act* and legislation as required. The landlords were only to use the suite for the intended purpose as stated on the 4 Month Notice. In this case, I find that the landlords had ended the tenancy in order to perform renovations that required the tenants to permanently vacate the home, but instead had decided to re-rent the suite to another party instead before they started renovating the home.

Although the financial circumstances and subsequent uncertainty may have changed after the issuance of the 4 Month Notice, and after the tenants had already moved out, I do not find that the landlords had provided sufficient evidence to justify the re-renting of the rental unit. I find that on October 30, 2020, when the first 4 Month Notice was served on the tenants, the landlords, as well as the rest of the world, were already dealing with the risk for financial uncertainty stemming from the pandemic. I do not consider the change in financial circumstances to be unexpected, nor do I consider the explanation provided meets the definition of "extenuating circumstances" as contemplated under the legislation. Furthermore, I find that MF was able to occupy the rental unit until August 28, 2021, which supports the tenants' testimony that the repairs or renovations were not necessary or so substantial that it required the ending of their tenancy. Although the landlords did eventually start the ceiling removal in September 2021, I find that this is well after the effective date of the 4 Month Notice, over 6 months after the effective date of the original 4 Month Notice, and after the tenants had filed their application for

compensation for the landlords' failure to fulfill their obligations. As stated above, I do not find that the landlords' explanation for the delay meets the definition of extenuating circumstances, nor do I find that the landlords had provided sufficient justification for re-renting the unit after the tenants had moved out. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51 of the *Act* for the landlords' noncompliance. I issue a monetary award to the tenant in the amount of \$14,400.00.

As the tenants were successful in their claim, I find that they are also entitled to recover the filing fee for this application.

Conclusion

I issue a \$14,500.00 Monetary Order in favour of the tenants in compensation for the landlords' failure to comply with section 49 of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: November 15, 2021

Residential Tenancy Branch