



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- compensation from the landlord related to receiving a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The landlord also was present for the last 13 minutes of the 66 minute hearing and did not testify.

The parties were informed prior to the hearing that they were not allowed to record the hearing.

Thereafter the parties were affirmed and were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issues –

The parties confirmed receiving the other's documentary and digital evidence in advance of the hearing. The agent confirmed receipt of the tenants' application.

The agent objected to the tenant's late evidence, primarily photographic evidence of the state of the rental unit prior to the start of the tenancy. The agent said this evidence was sent to them by email and he objected to that method of service, as the landlord never gave permission to be served in that manner.

In response to my inquiry, the agent said they had reviewed the evidence sent by email. I informed the agent that as they received and reviewed the evidence, I accept the evidence for the hearing.

Further, I also determine that this evidence to which the agent objected was not relevant to my decision, as will be addressed within this Decision.

Although the agent objected to the other party with the tenant, CB, acting as agent, due to not being identified prior to the hearing, I give this objection no weight. CB was listed as a tenant on the 2 Month Notice and the evidence pointed to him living in the rental unit during the tenancy, acting as a tenant. I find the landlord's agent was fully aware of CB acting for the tenant for this dispute.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenant submitted the tenancy originally began on June 1, 2013 and ended on February 28, 2021, when they vacated the rental unit. The monthly rent at the end of the tenancy was \$1,386, confirmed by the landlord. Filed into evidence was a copy of the notices of rent increases, with the latest increase bringing the monthly rent to \$1,386.

The tenants said that they vacated the rental unit in response to the Two Month Notice issued to them by the landlord. This Notice was dated December 31, 2020, signed by the landlord, and listed an effective move-out date of February 28, 2021. Filed into evidence was a copy of the Notice. It is noted that the name of the other party at the hearing for the tenant, CB, was listed on the Notice as a tenant.

The reason stated in the Notice was that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The rental unit was one side of a side-by-side duplex, with the landlord also renting the other side. The tenants submitted that they rented one entire side, which included the upper and lower levels.

In the written description portion of their application, the tenant wrote:

The landlord served notice to end tenancy for the purpose of moving his son in. It has been five months since I vacated, and seven since being served notice. Within this reasonable time, there has been a new tenant moved in to the lower floor of the house, and the landlord's son, who lives nearby, has only been around during the daytime to do work on renovating the upper floor. Because the deadline to file a complaint draws near, I feel I have no choice but to do so given the circumstances.

In support of the Notice and in response to the tenant's application, the landlord and agent submitted that the purpose of the Notice was so that the landlord's other son could move into the rental unit.

The agent's written evidence stated, among other things:

The unit needed to be brought up to a standard that was fit for occupancy. The state it was left in was not conducive to the landlord's son assuming occupancy. The landlord is nearly ()yrs old and attempted a lot of the repairs himself to help move the process along. The witness statement downplays the efforts of the landlord, who worked nearly every day at the unit until it was fit for use. The landlord's son's who work fulltime jobs, in some cases 2 jobs, helped out a great deal as well. There was a lot of work to be completed. The amount of work was compounded by the effects of covid 19. It was very difficult to find contractors during covid to help out. Covid 19 also curtailed efforts to receive supplies in a timely manner. Some stores closed, had limited capacity or orders had to be placed online because the products were not in store due to supply*

constraints. The covid 19 pandemic has proved to be a difficult part of all of our lives and many of us are still navigating the challenges. Two contractors that were hired for certain jobs at the unit reference the challenges of getting supplies to complete the repairs in a timely manner (see file (two contractor's names)) With covid 19 and the delay in supplies the landlord still put safety as priority and did not want to take shortcuts just to fast track repairs. Also, no neighbors were hired in the repairs for the unit. Repairs were, at all time, on going in this unit, until it was fit for occupancy.*

[Personal identifying information redacted for privacy]

Additionally, the agent wrote:

It is important the scope of the work that needed to be completed be given light. Regarding the state of the unit when the applicants moved out; the carpets were heavily stained, there was crayon, tape, pins, staples and drywall cracks on the walls. The paint was chipping on the walls. The upper bathroom had rot behind the tile in the shower, which had to be replaced. Multiple interior doors(files Door#1, Door#2) had holes in them, which also needed to be replaced. Upon completion of the upstairs portion of the unit in the beginning of June, repairs continued on the basement portion. Notably the kitchen counter needed to be replaced due to rot in and around sink/faucet. These repairs were completed by July.

The agent said that the landlord's son began making repairs on the rental unit and turned the lower level into another rental unit. The agent said the landlord's son moved into the upper level of the rental unit on or about June 25, 2021, and another person moved into the lower level in July 2021.

In response to my inquiry, the agent testified the proof to demonstrate the landlord's son moved into the rental unit was having the wifi connected in June 2021. Filed in evidence were copies of the billing statements for the rental unit address.

Tenants' response –

The tenant testified that their former neighbours informed them a new tenant moved in. Further, the tenant testified that the landlord attempted to have them move-out in 2016, and when the landlord made repairs in 2017 and 2018, the landlord wanted them to move-out.

The tenant submitted that the landlord wanted the tenants to move-out to replace the flooring and to repaint.

The tenant submitted that the house was in no worse shape than when they moved in.

The tenants' monetary claim is \$16,732, which included a filing fee of \$100.

Analysis

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

Section 51(2) provides that 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, or if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

The only issue I must consider in this dispute is did the landlord use the premises for the stated purpose within a reasonable time, pursuant to section 51(2) of the Act, and if not did the landlords have extenuating circumstances, in my opinion, that prevented them from using the premise for the stated reason, pursuant to section 51(3) of the Act.

The Notice was given for the reason that the premises was to be used by the landlord's son to reside.

Tenancy Policy Guideline 50 states that the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Additionally, in part, Guideline 50 reads,

Accomplishing the Purpose/Using the Rental Unit 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.

In this case, I find it was not necessary to consider the repairs being made.

I find the landlord submitted insufficient evidence that the landlord's son moved into the rental unit within 6 months of the effective date of the Notice, in this case, February 28, 2021, or at all. The agent said the landlord's only proof, after a direct question, was that the wifi bills proved the landlord's son moved into the rental unit.

I find a utility bill alone is insufficient to show occupancy or residency of a home, especially in the case of having another tenant in the rental unit. I would have expected the landlord's son to appear at the hearing to provide direct testimony, or provide a statutory declaration, or show a change of address, such as with a driver's licence showing their new address to be the rental unit, or any other government issued identification with the rental unit address listed as their address.

The landlord's agent filed evidence for this hearing beginning January 28, 2022, through February 6, 2022, which would be ample time to provide updated proof the landlord's son moved into the rental unit.

For this reason, I find the landlord submitted insufficient evidence that their son has moved into or occupied the rental unit.

I also find that the landlord has not accomplished the stated purpose, based upon the undisputed evidence that the landlord's son changed the nature of the rental unit, converting a single family dwelling into two separate units. The reason listed on the Notice was that the landlord's son would occupy the entire rental unit, which in this case, was the upper and lower level of the home. Instead, the lower level is being used for a separate and distinct dwelling.

For these reasons, I find the landlord submitted insufficient evidence that the rental unit was used for the stated purpose for at least 6 months within a reasonable amount of time after the effective date.

I have not considered extenuating circumstances in this matter, as I did not consider the repair delays asserted by the landlord. I based my Decision on other matters as noted above, for which the landlord provided no assertion of extenuating circumstances.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary award of \$16,732, the equivalent of monthly rent of \$1,386 for 12 months, or \$16,632, and the cost of the filing fee of \$100.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$16,732.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

I should note that the tenants' late evidence was not used for consideration in this matter, as I found the condition of the rental unit at the beginning of the tenancy was not relevant to my Decision.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$16,632 and recovery of the filing fee is granted. They have been granted a monetary order for \$16,732.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 12, 2022