



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on April 30, 2021. They are seeking an order for compensation from the Landlord’s prior end of the tenancy in 2020.

Pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”), the matter proceeded by hearing on January 14, 2022, after an adjournment on October 29, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Both parties confirmed they received prepared evidence from the other in advance and on this basis, I proceeded with the hearing as scheduled.

Issue to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice, pursuant to s. 51 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement they signed at the start of the tenancy. This tenancy began on June 1, 2016 and continued on a month-to-month basis past the original two-year fixed term. The rent at the time the tenancy ended was \$5,830 per month.

The Landlord issued the Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”) on July 21, 2020, setting the end-of-tenancy date for

September 30, 2020. The reason indicated was that the Landlord or the Landlord's spouse would occupy the rental unit. The Tenant did not dispute this Two-Month Notice through a dispute resolution process and moved out from the rental unit at the end of September 2020.

In the hearing, the Tenant described how they discovered there was a large bin on the property after they moved out. Friends/neighbours in the area described the rental unit as being "gutted". The Tenant drove by the property after they received this news, and observed it was sitting vacant. They believed it was in December 2020 that the bin was out front, and this was when the renovations by the Landlord started.

The Tenant noticed a stop work order "after December" as they recalled in the hearing. They called the local municipality to confirm that a stop work order was in place for that rental unit, as they observed.

On their Application, the Tenant claimed \$69,960, being the amount for twelve months rent payment as the *Act* prescribes in these circumstances. They provided that the Landlord "gave 2 months notice to vacate for personal use; however, [they] did not move in." After renovations started, all work stopped. As of the time of their Application, the home was still yet uninhabitable, with no walls, floors, kitchen, or bathrooms. They stated the Landlord "could have allowed us to stay while [they] planned the renovations properly/legally, with permits." Further, "it's been 7 month[s], still no permits and home is vacant."

In their evidence the Tenant included images of the plants not returned to the inside of the rental unit, and work proceeding inside. In each photo the walls are down to the studs and there is no flooring or ceiling. All kitchen counters and laundry room attachments are gone.

At the hearing, the Tenant presented the Landlord stated they wanted to do a renovation to the rental unit when they did a walk-through of the rental unit together. The Tenant noted they were trying to abide by the rules throughout the tenancy and they cited the Landlord not wanting to return the security deposit back at the end of the tenancy, as an example of the Landlord not following the rules.

The Landlord presented a letter dated October 15, 2021 that set out a timeline:

- After the 2019 – 2020 school year they decided to move back to the unit with their daughter. This was for their daughter to attend school in that area.

- They moved to the unit on October 1, 2020 and noticed some work had to be done, including “fixing a leaking roof, repairing a toilet, replacing the washer and dryer, renovating the kitchen and painting the interior of the house” and “some problem with the wiring.”
- The hired contractor began work and then suggested they move out because the work “was more extensive that we previously believed” and on November 25, 2020 they moved into a hotel, planning to stay one month.
- The municipality issued a stop work order because the contractor did not obtain a building permit.
- In January 2021 they stayed in an Airbnb and after this moved to a rental unit of their own in February 2021.
- Their personal property remains in their home that is being renovated.
- They did not know the insulation in the rental unit had to be replaced or that they would have to leave temporarily after the contractor began their work. The work was not completed in December 2020 when they expected to be able to move back in. The municipality issued the stop work order on January 5, 2021 and this prevented any further work until they received the permit in September 2021.

In the hearing, the Landlord stated they were still not residing in their home yet. The contractor was still doing work and they hoped to finish within a couple of months. The work resumed right after the issuance of the permit. Delays were caused by a lack of materials and workers.

A statement from the contractor sets out the same initial repair scheme as stated by the Landlord. The contractor discovered a leak in a bedroom and then discovered insulation “had turned black and lost its thermal effect” – this continued through the entirety of the rental unit. Also the ceiling had developed problems. They suggested all the drywall be replaced, requiring the Landlord to move out from the home for this process. They obtained the permit in September 2021. In addition to the drywall, insulation and roof, they are “updating the wiring, water pipes and heating as well as repairing the roof and reinforcing the roof trusses.”

In their evidence the Landlord provided their communication with their child’s schools concerning enrollment. There were also three utility billings through to January 2021, an invoice for pest control from September 2021. There was a purchase order for a new piece of bedroom furniture and an invoice from their hotel stay through December 2020, and their Airbnb stay in January 2021. Finally, there was acknowledgment from the municipality for the Landlord’s application for a building permit.

Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice on July 21, 2020 for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord . . . does not establish that
 - (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
 - (b) the rental unit . . . has been 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 . . . from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (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.

The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

I find the evidence is plain that the Landlord did not use the rental unit for the reason they ended the tenancy for at least 6 months. The Landlord described their move-out from the unit in November 2020 for the purpose of more extensive renovations: this is their move-out from the rental unit to a hotel on November 25, 2020. They did not occupy the rental unit for a residential purpose at any time after their initial occupancy period of approximately 8 weeks.

Because of this the Landlord must prove that extenuating circumstances prevented them from using the rental unit for the stated purpose.

I accept the Tenant's evidence that they observed the rental unit with "no walls, floors, kitchen, or bathrooms." I conclude the scope of the project was large and ongoing. I find this was not planned by the Landlord, as attested to by the contractor in their statement. I am satisfied the nature of the renovations shifted considerably, amounting to the Landlord taking immediate measures to protect their investment. I find there was an urgent need for repairs that ostensibly began with the contractor identifying an issue with insulation and drywall.

Further evidence that the renovations were not anticipated was the stop work order by the municipality. There was no permit in place for this scope and type of project. I find this is evidence that extenuating circumstances arose in the form of an expanded renovation project scale, not anticipated or planned for, with no permit in place or even applied for. The Landlord did not plan for this work based on the fact that they had no permit in place.

These renovations also forced the Landlord to move out. The fact they had to move into a hotel and then other accommodation, and then eventually renting on their own elsewhere, proves the renovations were not planned. I cannot rectify the Landlord's stay in a hotel with the need to end the tenancy with the Tenant; I conclude it only shows the Landlord's plans to occupy the rental unit were thrown into disarray.

As of the date of the hearing, the Landlord has not returned to the rental unit to continue their own occupancy. I find this lends weight to their submission that the work was unanticipated. This is definitely not a situation where they rented the property to others; rather, the Landlord on their own is now renting elsewhere, from which I conclude they had no other designs on the use of the rental unit other than their own occupancy. I find their own need to rent proves extenuating circumstances were present.

Of lesser weight though still relevant is the Landlord's evidence on their furniture purchase for their child, and school records showing enrollment. I find the latter records are significant life-planning events that focus on the family's living arrangement. This shows the Landlord had definite plans to stay in the home, with a forced hotel stay just not matching up with this very important schooling need. I conclude the plan was for the child to stay in the home, naturally with the parent. This was interrupted with the urgent need for important renovations to the home.

The Residential Tenancy Policy Guideline 50: Compensation for Ending a Tenancy gives a statement of the policy intent of the legislation. This describes exceptional circumstances as "matters that could not be anticipated or were outside a reasonable

owner's control." Applying this to the current situation, I find the Landlord was not aware of the state of the rental unit until fully advised by the contractor on the type of work involved. This constitutes exceptional circumstances. I find the Landlord was prevented from occupying the rental unit for the required time as set in s. 51.

I find s. 51(3) applies to the current situation; therefore, I excuse the Landlord from paying the amount set in s. 51(2).

Conclusion

For the reasons above, 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 s. 9.1(1) of the *Act*.

Dated: February 11, 2022