



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EDMONTON HOLLINGSWORTH
HERITAGE REVITALIZATION CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 01, 2020, for compensation for monetary loss or other money owed (the "Application").

Judicial review

This matter was heard by a different Arbitrator on January 21, 2021, and their decision was issued February 10, 2021. The Tenant sought judicial review of the February 10th decision which was quashed and set aside by consent. This matter was sent back to the RTB for a new hearing which occurred on March 14, 2022 before me (the "New Hearing").

New Hearing

The Tenant appeared at the New Hearing with the Witness and Legal Counsel. The Witness was not involved in the hearing until required. The Agent for the Landlord (the "Agent") appeared at the hearing 25 minutes late. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant, Witness and Agent provided affirmed testimony.

Amendments and withdrawal

The Application has been amended to include the correct spelling of the Tenant's name as well as the current name of the Landlord, both of which are reflected in the style of cause.

The Tenant originally applied for the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Residential Tenancy Act* (the "Act") and \$1,179.26 in relation to gas bills. The Tenant withdrew the request for \$1,179.26 in relation to gas bills at the New Hearing.

Service

Both parties submitted evidence prior to the original hearing. The Tenant submitted written submissions and an evidence package for the New Hearing. I addressed service of the hearing package and evidence at the New Hearing.

Legal Counsel for the Tenant advised that they are relying on the following at the New Hearing:

- The written submissions (*Tenant's_Written_Submissions.pdf*)
- The evidence package (*Tenant's_Evidence_Package.pdf*)

Legal Counsel advised that the hearing package, written submissions and evidence package were sent to the Landlord by registered mail February 22, 2021.

The Agent confirmed receipt of the hearing package, written submissions and evidence package and confirmed there are no service issues regarding these.

Legal Counsel advised that the Landlord did not re-serve their evidence for the New Hearing as required. Legal Counsel advised that they had some of the Landlord's evidence from the original hearing. Upon review of the Landlord's evidence, Legal Counsel advised they did not have:

- A photo of a downspout for the rental unit
- Text messages

The Agent testified that the Landlord did not re-serve their evidence on the Tenant for the New Hearing. The Agent acknowledged the above noted evidence is not relevant to the claim for the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Act* and therefore it was agreed that I would not consider it.

Legal Counsel agreed to the Landlord's evidence, other than the photo of a downspout for the rental unit and text messages, becoming evidence on the New Hearing and therefore I have considered the remaining evidence.

The parties confirmed there are no further service issues.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence, written submissions, oral testimony and oral submissions provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Act*?

Background and Evidence

The Tenant seeks the equivalent of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2020 (the "Notice").

Tenancy agreement

The Tenant testified as follows in relation to a tenancy agreement in this matter. There was a written tenancy agreement between the Tenant and previous owner of the rental unit. The tenancy started in January of 2018 and was a month-to-month tenancy. Rent at the end of the tenancy was \$1,400.00 due on the first day of each month. The Landlord purchased the rental unit and took possession of it in July of 2018. There was no new written tenancy agreement completed between the Tenant and Landlord.

The Agent testified as follows in relation to a tenancy agreement in this matter. The tenancy started before the Landlord purchased the rental unit and they do not know the start date of the tenancy. The tenancy was a month-to-month tenancy. Rent at the end of the tenancy was \$1,400.00 due on the first day of each month. The Landlord took possession of the rental unit in July of 2018. No written tenancy agreement was completed between the Tenant and Landlord.

Notice

The parties agreed the Notice in evidence was served on the Tenant. The Notice was issued by the Landlord using their previous name which is noted on the front page of this decision. The Notice had an effective date of April 30, 2020. The grounds for the Notice were:

The rental unit will be occupied by the landlord or the landlord's close family member...(being):

The landlord or the landlord's spouse

The parties agreed the Tenant provided notice ending the tenancy earlier than the effective date and moved out of the unit April 04, 2020.

Summary of positions

I heard the Tenant and Legal Counsel on the Application first because it is the Tenant's Application. Neither party objected to this process when asked.

A summary of the parties' positions is as follows.

Legal Counsel for the Tenant made three arguments. First, the Landlord could not have followed through with the stated purpose of the Notice because the Landlord is a company and not an individual as required by section 49(3) of the *Act* which states:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Second, even if I considered the Notice under the “family corporation” ground in section 49(4) of the *Act* which states:

A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

the Landlord is not a “family corporation” as defined in the *Act*. Third, even if the first two issues raised could be resolved, the rental unit remained empty until at least September of 2020.

The Agent for the Landlord testified that the ground checked off on the Notice was checked off in error. Further, the Landlord is a “family corporation” as defined in the *Act*. Lastly, the Agent’s father, J.G., moved into the rental unit July 29, 2020.

Tenant’s submissions

As stated, Legal Counsel for the Tenant made three arguments. I do not find it necessary to consider the first or second arguments raised by the Tenant. For the purposes of this decision, it is only necessary to address the Tenant’s third argument and I have only outlined the evidence and submissions relevant to it.

The Tenant took the position that nobody moved into the rental unit after they moved out April 04, 2020. The Tenant testified that they went with the Witness to the rental unit on June 26, June 30, August 04 and September 24, 2020, and took photos of the rental unit showing that it was empty. The Tenant testified that they knocked on the door of the rental unit and nobody answered the door. The Tenant testified that they went to the rental unit at different times of the day to take photos and knock on the door and that nobody was around the rental unit. The Tenant testified that the living room and front area of the rental unit has large windows which allowed them to see inside very clearly and that the unit was untouched and looked the same as when they moved out. The Tenant pointed out that they have submitted photos from the day they moved out as well as photos from June to September of 2020 to show that the rental unit was untouched.

The Tenant testified about maintenance and repair issues with the rental unit throughout the tenancy as well as their communications with the Landlord in this regard.

The Witness testified that they went with the Tenant to the rental unit and took photos of the rental unit on June 26, June 30, August 04 and September 24 of 2020. The Witness testified that the photos show the rental unit was bare and in the same condition as when the Tenant moved out.

The Agent asked the Witness questions. The Witness further testified that they went to the rental unit with the Tenant around nine times to check if anybody was living in the rental unit. The Witness acknowledged that there were changes to the rental unit between April and September of 2020 being changes to the positioning of blinds, a door and numbers being painted and a hose being hooked up. The Witness also testified that they wrote their letter in evidence in 2022, not 2021 as stated in the letter.

Legal Counsel submitted that section 51(2) of the *Act* applies because nobody moved into the rental unit after the Tenant moved out April 04, 2020. Legal Counsel stated that the evidence submitted by the Landlord does not show that J.G. moved into the rental unit as claimed. In particular, Legal Counsel noted a gas bill for the rental unit in evidence in J.G.'s name and submitted that this does not show that J.G. lived in the rental unit. Legal Counsel also noted that the gas bill shows the gas was activated in August of 2020. Legal Counsel referred to the photos submitted by the Tenant and pointed out that none of the photos show any furniture in the rental unit between June and September of 2020. Legal Counsel also submitted that the photos show the kitchen remained untouched between April of 2020, when the Tenant moved out, and September of 2020, when the last photo was taken. Legal Counsel stated that it is a stretch of the imagination that there would be no furniture on the ground floor of the rental unit and the kitchen would remain untouched if J.G. lived there as claimed.

Legal Counsel further submitted that, even if I accept that J.G. moved into the rental unit July 29, 2020, this is not within a reasonable period after the effective date of the Notice. Legal Counsel relied on RTB Policy Guideline 50 which states that a reasonable period is 15 days. Legal Counsel submitted that the Landlord should have issued a notice to end tenancy for repairs and renovations if their position is that the delay in J.G. moving into the rental unit was caused by required repairs.

Landlord's submissions

The Agent did not dispute that the rental unit was empty in June of 2020. The Agent testified that J.G. moved into the rental unit July 29, 2020. The Agent testified that J.G. is "on disability", has a "substance abuse problem" and only receives \$375.00 for shelter

expenses. The Agent testified that J.G. could not afford to rent anywhere else. The Agent testified that they moved J.G. into the rental unit because the Landlord did not have other units available. The Agent testified that the rental unit was chosen for J.G. because the Tenant had mentioned wanting to move and other tenants in the building wanted to stay.

The Agent testified that the gas bill for the rental unit in evidence in J.G.'s name did start in August of 2020 because the Agent paid for gas between April and July of 2020 while repairs were being done to the rental unit. The Agent testified that J.G. has never had a dining room table.

The Agent pointed out that the Tenant moved out of the rental unit on April 04, 2020, during the global pandemic. The Agent testified that the delay in J.G. moving into the rental unit was caused by repairs and renovations needing to be done in the rental unit and the global pandemic which caused "things to shut down". The Agent said they thought the rental unit had to be used for the stated purpose on the Notice within six months of the effective date and so they waited for "things to settle down". The Agent submitted that things were "emergency only" at the relevant time due to the pandemic and noted that the repairs and renovations to the rental unit were not an emergency. The Agent said they took their time to get someone to come into the rental unit to do the repairs and renovations because they were trying to follow guidelines. The Agent also testified that their mother-in-law and J.G. are immune-compromised and therefore the Agent could not go out and do things themselves. The Agent said they waited until it was more reasonable to have someone do the repairs and renovations in the rental unit.

The Agent advised that they ended up having the neighbour of the rental unit complete the repairs and renovations in the rental unit. The Agent testified that the neighbour made cosmetic changes to the rental unit such as paint and a "few things upstairs". The Agent stated that they did not have a list of the repairs and renovations done to the rental unit. The Agent also testified that the neighbour just took time to get the work on the rental unit completed.

Tenant's reply

In reply, Legal Counsel pointed out that the Landlord has not provided documentary evidence about what repairs were carried out in the unit or to support the reasons for the delay in the repairs and renovations being done.

Documentary evidence

The Tenant submitted the following relevant documentary evidence:

- The Notice
- Photos of the rental unit between April and September of 2020
- Documentary evidence about maintenance issues in the rental unit
- Repair request dated February 07, 2020
- Signed letter from the Witness

The Landlord submitted the following relevant documentary evidence:

- Signed letter from J.G.
- Gas bill for the rental unit in J.G.'s name issued December 21, 2020
- Documentary evidence about maintenance issues in the rental unit

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) 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 the landlord or purchaser, as applicable, 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, except in respect of the purpose specified in section 49 (6) (a), 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 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 applicable, 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, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Pursuant to section 51(2) of the *Act*, the Landlord has the onus to prove they followed through with the stated purpose of the Notice. The Landlord also has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position.

As stated above, I only find it necessary to address the Tenant's third argument given my decision as outlined below. Further, I will accept for the purposes of this decision that J.G. moved into the rental unit on July 29, 2020. I do have concerns about the sufficiency, reliability and credibility of the evidence provided to show that J.G. moved into the rental unit on July 29, 2020; however, as stated, I accept this point for the purposes of this decision.

The effective date of the Notice was April 30, 2020. Pursuant to section 51(2) of the *Act*, the Landlord must prove that J.G. moved into the rental unit "within a reasonable period after the effective date of the notice".

RTB Policy Guideline 50 addresses what a reasonable period is and states (pages 2-3):

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

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.

(emphasis added)

Pursuant to the above, a reasonable period after the effective date of the Notice is 15 days or somewhat longer. The dictionary definition of "somewhat" is "to a moderate extent or by a moderate amount". I find Policy Guideline 50 contemplates a reasonable period to be around 15 days and I find it should be no more than 30 days which is twice the amount stated. There would be no reason to set out a 15-day period in Policy Guideline 50 if a reasonable period was in fact twice this amount.

Accepting for the purposes of this decision that J.G. moved into the rental unit on July 29, 2020, this was two months and 29 days after the effective date of the Notice. Two months and 29 days is well past the 15-day period noted in Policy Guideline 50 and is not "somewhat" longer than 15 days because it is basically six times the 15-day period noted. I find J.G. did not move into the rental unit within a reasonable period after the effective date of the Notice.

It is open to the Landlord to submit that extenuating circumstances prevented J.G. from moving into the rental unit within a reasonable period after the effective date of the Notice and I find the Agent has done so here.

Policy Guideline 50 states as follows about extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

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.

The Landlord has not submitted compelling evidence to prove extenuating circumstances prevented J.G. from moving into the rental unit within a reasonable period after the effective date of the Notice. The only evidence before me about extenuating circumstances is the Agent's testimony and the signed letter from J.G.

I found the Agent's testimony about the reasons for the delay in J.G. moving into the rental unit vague and general. The Agent relied on repairs and renovations needing to be done in the rental unit and delays in having these completed due to the pandemic. However, the Agent could not provide details about what repairs and renovations were completed in the rental unit and there is no documentary evidence before me showing what repairs and renovations were completed. Further, the Agent did not testify about when the repairs and renovations were started or completed. As well, the repairs and renovations mentioned by the Agent seem to be minimal. In relation to the pandemic, the Agent did not provide a compelling link between the pandemic or pandemic guidelines and the delay in the repairs and renovations being started or completed. It is unclear based on the evidence provided how the pandemic caused delay in the neighbour of the rental unit completing minimal "repairs and renovations" in the rental unit which was empty at the time.

I note that the Landlord did not submit evidence from the neighbour of the rental unit about when they were contacted about doing work in the unit, when they started the work, what work they did or when the work was completed. Nor is there documentary evidence before me showing why there was a delay in having the minimal "repairs and renovations" completed, such as documents showing materials were ordered but not delivered for a lengthy period of time.

As well, extenuating circumstances are meant to cover unanticipated issues or issues which were out of the Landlord's control. If a landlord is ending a tenancy for their parent to occupy the rental unit, their parent should attend the rental unit to determine if it suits their needs prior to the landlord issuing a notice. If the Landlord had taken this simple step here, they would have known in February of 2020 what upgrades J.G. wanted done to the rental unit and could have acted accordingly.

The letter from J.G. in evidence states in part:

I viewed the property late April, 2020 (after allowing ample time due to covid). After viewing the property I asked my daughter and son in law if they could do minor cosmetic upgrades to which they agreed. I was informed that the upgrades would take some time as the province was under a state of emergency and non-essential services were currently shut down. In late July 2020 I [performed] a second walk-thru after the upgrades were completed. I was given the keys to the unit on July 29, 2020 and was allowed to move in.

I note that J.G. did not even view the rental unit until late April despite the Tenant moving out April 04, 2020. J.G. states that the delay in viewing the rental unit was due to the pandemic without explaining what about the pandemic delayed them viewing an empty rental unit. I also note that J.G. does not outline what the “minor cosmetic upgrades” were.

I find both the Agent and J.G. have simply provided vague and general statements about repairs, renovations, upgrades and the pandemic without providing a compelling link between these issues and the delay in J.G. moving into the rental unit. It is not clear from the evidence provided why it took two months and 29 days for a neighbour of the rental unit to do “minor cosmetic upgrades” in an empty unit.

Further, neither the Agent nor J.G. explained why J.G. was prevented from moving into the rental unit when only “minor cosmetic upgrades” were completed. It is not clear from the evidence provided why “minor cosmetic upgrades” could not have been done while J.G. lived in the rental unit.

Given the above, the Landlord has failed to prove J.G. moved into the rental unit within a reasonable period after the effective date of the Notice. Further, the Landlord has failed to prove extenuating circumstances prevented J.G. from moving into the rental unit within a reasonable period after the effective date of the Notice. Therefore, I find section 51(2) of the *Act* applies.

As outlined above, I find section 51(2) of the *Act* applies even if I accept that the first two issues raised by the Tenant can be resolved. In other words, even assuming that I can consider the Notice under the “family corporation” ground in section 49(4) of the *Act* and even assuming the Landlord is a “family corporation”, the Landlord has still failed to prove J.G. moved into the rental unit within a reasonable period and failed to prove extenuating circumstances. Given this, I do not find it necessary to decide whether I can consider the Notice under the “family corporation” ground or whether the Landlord is a “family corporation” because regardless, the Landlord must pay the Tenant 12 times the monthly rent pursuant to section 51(2) of the *Act*.

Pursuant to section 51(2) of the *Act*, the Landlord must pay the Tenant 12 times the monthly rent which I calculate to be \$16,800.00. The Tenant is issued a Monetary Order for \$16,800.00.

Conclusion

The Application is granted. The Tenant is issued a Monetary Order for \$16,800.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 21, 2022

Residential Tenancy Branch