



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 tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order that is the equivalent to 12 months rent, pursuant to section 51 of the Act.

The tenants, the landlords, and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary 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 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.

Issue(s) to be Decided

Are the tenants entitled to a monetary order pursuant to section 51 of the Act and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 8, 2021, and ended on May 8, 2021. The monthly rent was \$1,700. The parties listed as landlords were not the tenants' landlords, as the original landlords sold the residential property to the respondents. The respondents requested that the original landlords issue the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) as a condition of sale. Filed in evidence was a copy of the written tenancy agreement and the Notice.

The Notice was dated April 20, 2021, with an effective date of June 30, 2021, with the reason being that the conditions of sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The tenants accepted the Notice as they vacated.

The rental unit was in the upper level of the home, and the lower level was rented to other tenants, who also received a 2 Month Notice.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

Counsel filed a written submission and provided an oral submission at the hearing. In relevant part, counsel submitted that the landlords took ownership of the residential property on July 1, 2021, and upon possession of the property, discovered that "the Unit was not suitable for habitation by their parents due to" deficiencies in the kitchen fixtures, flooring, bathroom fan, tub, toilet and vanity.

Counsel wrote that the landlords were not granted any viewings of the home and purchased the home based upon the pictures provided to them. Filed in evidence were photographs of the home at various times.

Counsel submitted that the basement suite also required a great deal of renovation and repairs.

The intent of the respondents was for their elderly parents to move into and occupy the entire home and it was important that they be provided a safe and habitable home.

Counsel wrote that the tenants left behind “truck loads of garbage”. The submissions were that the respondents live in another city and had to travel to the residential property to attend to the repairs themselves to save on costs. In August 2021, the respondents were not able to travel due to the wildfires in the BC interior, as non-essential travel was discouraged. Work resumed in September 2021. Due to the poor condition of the various appliances left behind, the respondents were forced to purchase new appliances.

In September 2021, the landlords’ mother began experiencing serious health problems, which continued through October and November 2021, which meant the landlords and the landlords’ father could not continue to travel to work on the residential property.

In November 2021, the highway connecting the landlords’ home and the residential property was closed due to serious flooding. The highway did not open for travel until late January 2022 and in February, 2022, renovations commenced again on the home.

The landlords did not attempt to lease the “Unit”, Covid-19 continued to rage on and the landlords had no idea that the Unit would require the extent of the renovation and repair, which meant they “had to budget their finances accordingly”.

Filed in evidence were receipts, a contractor’s estimate, utility bills, medical records, and a realtor’s statement.

The landlords testified that they were not able to view the property before purchasing the property and alleged that the tenants deliberately prevented them from viewing the home. The landlord asserted that the supply chain has been disrupted and that the costs of renovations is too high to hire a contractor. The landlord testified they could not have anticipated the amount of work to be done.

Tenants' response –

The tenants testified they did not receive the landlords' evidence in time to file a written response. The tenants asserted that on April 6, 2021, they received an email from the original landlords' agent that the home was being listed and on April 7, 2021, the home was sold. The tenants said they were not asked for a viewing prior to the home being listed or sold; however, the tenants provided photos to the agent. The tenants said a lot of the photos in the landlords' evidence was the lower rental unit, not theirs. The tenants reaffirmed the evidence shows the issues were with the lower unit and that the original landlords lived in the rental unit prior to the tenants' tenancy.

The tenants denied they intentionally prevented the landlords from viewing their rental unit, but could not allow a viewing at the requested time because ST had Covid and was in bed for 20 days. The tenant said they do not appreciate the accusations of the landlords.

The tenants submitted that they had a move-out inspection, the rental unit was fine, and they received their security deposit. Tenant AT said she is a cleaner and tenant ST said he is a painter and they would never leave a home in the condition as alleged by the landlords. ST said he was bothered by the landlords' accusations as he would lose his job if he left a place in the condition the landlords were alleging.

The tenant said he did a lot of work on the home himself, that the lower rental unit was in shambles and that the landlords have cast aspersions on his good character.

AT pointed out that the rental unit is not being used for the stated purpose eight months out.

Counsel confirmed that the residential property is still unoccupied as of the date of the hearing and that work is just finishing on the basement. Counsel submitted that the landlords' parents did not want to move into the residential property until the entire home was ready, as the intention was to use the whole home, not either the upper or lower units.

The landlord testified that their intent was not to be dishonest, but that their parents just wanted a whole home that their children and grandchildren could come and visit. The landlord testified they were not a bottomless pit and their parents did not want to live through a reno.

Analysis

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

The 2 Month Notice was given to the tenants listing that the landlords, as the purchasers, or a close family member intends in good faith to occupy the rental unit.

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 landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the rental unit has remained unoccupied through the date of the hearing, which is eight months after the effective date of the Notice, or June 30, 2021, I find the landlords must pay the tenants the amount of \$20,400, the equivalent of 12 times the monthly rent of \$1,700.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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.

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.

In these circumstances, I find the landlords submitted insufficient evidence to show that the matters could not be anticipated or were outside the landlord's control.

I find it was the landlords' choice to purchase the home prior to physically viewing the property or having a home inspection. I also find the tenants are not responsible for the state of the lower unit, which was not their rental unit, the photographs of which appear in the landlords' evidence.

I was also particularly influenced by the landlords' evidence, the statement from the realtor, which stated that the landlords knew "most of the value was in the land; the buyers knew the risk and assumed the home was in the same condition as portrayed on the recently listed MLS listing". I find this statement shows the landlords were aware and on notice that there would be a possibility of house, or structural, issues, if the value was in the land.

While I accept the landlords' evidence that their mother had health issues through November 2021, there was no evidence that the health issues carried on after that month. Yet the rental unit remains unoccupied.

The highway closed due to flooding is re-opened and the wildfires abated, yet the rental unit remains unoccupied.

I find the evidence supports that the landlords' overall and main reason for their parents not occupying the rental unit even through the date of the hearing is due to the costs of renovation and the time involved, as they did the work themselves to save money. This is specifically an example under the Policy Guideline that would not be an extenuating circumstance.

As I have found the landlords must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,700 and as I have found insufficient evidence of extenuating circumstances preventing the landlords' parents

from occupying the rental unit, even eight months after the effective date of the Notice, I find the tenants have established a monetary claim of \$20,400.

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 order of \$20,500, the equivalent of monthly rent of \$1,700 for 12 months, or \$20,400, and the cost of the filing fee of \$100.

Should the landlords 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.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$20,400 and recovery of the filing fee is granted. They have been granted a monetary order for \$20,500.

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 09, 2022

Residential Tenancy Branch