



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$1,600.00 payable on the first of each month. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use sometime in February, 2021 with an effective date of April 30, 2021. The Notice was mistakenly dated April 21, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or a close family member.

The tenants gave written notice to the landlord pursuant to section 50(1) on March 3, 2021 to end the tenancy on March 15, 2021. The parties agree that the tenancy ended on that date.

The parties agree that, since the end of the tenancy, the landlord has not occupied the rental unit and instead commenced renovations to the property. The landlord testified that as at the date of the hearing, renovations are ongoing and neither they nor any family members have occupied the rental unit at any time.

The landlord testified that they originally intended to occupy the rental unit so their children could attend a nearby public school. The landlord says the family decided the rental unit required renovations to make it suitable for them. The landlord submitted evidence that they applied for permits to conduct the work with the municipality on April 21, 2021.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (a) 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
- (b) 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's Notice to End Tenancy for Landlord's Use, erroneously dated April 21, 2021 provides that the rental unit will be occupied by the landlord or a close family member. The parties agree that the tenancy ended on March 15, 2021 in accordance with the Notice. The parties agree that no member of the landlord's family has ever occupied the rental unit and instead the property is undergoing renovations. Based on the undisputed evidence I find the rental unit was not used for the stated purpose.

If the landlord's intention was to renovate the property the landlord ought to have made an application pursuant to section 49.2 for an order to end the tenancy. The landlord chose not to do so and instead issued a 2 Month Notice stating that they intended to occupy the rental unit.

Section 51(3) of the *Act* provides that:

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 the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (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

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that would likely not be considered extenuating.

Based on the submissions of the landlord I find no extenuating circumstances that would excuse them from paying the tenants as required under section 51(2). The landlord said that after taking possession of the rental unit the family members decided to perform renovations to provide the children with their own bathrooms. Changing one's mind is explicitly excluded as a circumstance that would not be considered extenuating in the Policy Guideline.

I find that any delays in completing the renovations attributable to the process of obtaining permits required by law, supply chain issues or scheduling workers are not circumstances that are extenuating but the result of the landlord's initial decision in changing their mind to perform renovations rather than occupy the rental unit.

I find, based on the evidence of the parties, that the landlord did not use the rental unit for the purpose stated on the Notice to End Tenancy within a reasonable time. I find that no extenuating circumstances exist that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the Act.

Consequently, I find that the tenants are entitled to a monetary award of \$19,200.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$19,300.00. The landlord must be served with this Order as soon as possible. Should the landlord 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: May 19, 2022

Residential Tenancy Branch