Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP, DRI, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $24,000.00 for damage or compensation under the Act; for an order for the Landlord to return the Tenant's personal property; to dispute a rent increase from the Landlord; and to recover the $100.00 cost of their Application filing fee.

The Tenants, the Landlords, and an agent for the Landlord, K.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated various matters of dispute on their Application. As we had only an hour for this hearing, I asked the Tenants to indicate the most important claim for us to review in our limited hearing time. The Tenants specified their claim for a monetary order of $24,000.00 for damage or compensation under the Act, which we reviewed, as well as their claim for recovery of their $100.00 Application filing fee. As I explained to the Parties in the hearing, the Tenants' **other claims are dismissed with leave to reapply**.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began as a fixed-term on April 1, 2013, and it ran to March 31, 2014, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlords a (final) monthly rent of $2,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $1,000.00, and no pet damage deposit. They agreed that the Landlords had returned the security deposit to the Tenants in full when the tenancy ended on July 31, 2021. They agreed that the Tenants gave the Landlords their forwarding address in writing on November 18, 2021.

The Parties agreed that the tenancy ended, because the Landlords served the Tenants with a Two Month Notice to End the Tenancy for the Landlords' Use dated May 27, 2022 ("Two Month Notice"). The Parties agreed that the Two Month Notice was signed, dated, and served on the Tenants in person on May 27, 2021. The Two Month Notice had an effective vacancy date of July 31, 2021, and it was served on the ground that the rental unit would be occupied by the Landlords or a member of the Landlords' close family (parent, spouse, or child). The Parties agreed that the Tenants moved out of the residential property on or about August 3, 2021. They agreed that the Landlords moved into the residential property in mid-April 2022.

The Tenants applied for compensation pursuant to section 51 of the Act because, the Tenants testified that the Landlords have not fulfilled the stated purpose on the Two Month Notice. Section 51(2) states that a landlord must pay the tenant:

> …an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:
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> (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
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> (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 Tenants said:

> When we were given the Two Month Notice – only given two of the four pages. The RTB said that the Landlord in living in there with their family, could do some minor renovations, but they could not gut and completely rebuild the house.
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> They gave us the wrong eviction notice. They had contractors come in about a month before we were given an eviction notice to do additions. and said they're doing it so it's better for rentals. We believe they wanted to live in the top half and rent out the bottom. He tried to raise the rent $200.00 and I said you can't do that.

The Landlords' Agent said:

> There is no addition inside or in this property. There were minimal renovations done inside, because everything was left disgusting and not useful. When we inspected the deck is was rotten.

I asked the Agent why it took them eight months to move into the residential property after the end of the tenancy. She said:

> We needed permits . . . somebody complained, and we had to get a stop work order. We had to get architects in to prove that we weren't doing extensions.

> The Stop Work Order started on October 20, [2021]. In January [2022] they approved the permit to continue to do construction. After between February and April – we had to prove that we weren't doing anything illegal. There was plumbing, electrical, and gas. After the final inspection of April 19, we moved in.

The Tenants said:

> They got a stop work order because they didn't apply for any permits, which is against the law. The whole house is completely different. Only the bones of the house is original They gutted the inside, they redid the front, and built a new deck.

I asked the Landlords if there were any extenuating circumstances that contributed to their delay in fulfilling the stated purpose of the Two Month Notice, and they said:

> The reasons for not moving in is the City delay – and Covid - we cannot do anything if there is a stop work order - until we have the permit issued. Everything was also delayed by Covid. We needed a new design – there was no plan at City Hall. We needed to bring an architect to make a plan. That's why it took that long.

The Tenants said:

> The work that was big commenced the day after we moved out. They started to build immediately. They took the siding out, the windows out . . . it was 24/7 until they got their stop work order. I was evicted on a two month notice, not a four month notice to renovate the house.

The Landlords said:

> I did gave them the notice. The last month they didn't even pay rent, and they didn't move until August 3rd. I am not renting out that house to anybody. I have to move in …. I had to make a livable house, the way they left the house - dog feces, urine, everything in the house on the carpet. We gave them a brand new carpet when they moved in.

I asked the Landlords what renovations they did and they said: "Electrical inspections, gas, plumbing inspections. We had trades busy and delayed. We ordered appliances in end of August and the didn't deliver them until March 15, 2022. That's the delay."

The Tenants said:

> They gave us the wrong notice - a two month notice, instead of a four month notice. They told us when we were leaving – 'no carpet cleaning, no paint, don't do anything'. They changed the whole front of the house. The house had been rented since 2006. They put no money into it until the deck. We lived there eight years. I believe he had a plan, and that he doesn't follow many rules or laws. We have to follow the rules so he should have to as well.
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> I moved in with all my own appliances. Look at the big picture. He had eight months, and three of those were the stop work, because he didn't apply for the proper permit. So, five months is a long time to not move into the house that we had to be out of. When construction started and went on for several months before the stop work – those aren't minor renovations. The house is older. He knew about everything. I believe he had this in the making for a long time.

The Agent responded:

> It was a refresh. We called City Hall before touching the property. We asked the City what needed to be done, and someone complained. Nothing was done outside of the law like they say. We had to prove yet again that we did not change anything structurally, and thanks to the City and Covid, we were delayed.

The Tenants submitted photographs of the residential property showing that the exterior finish had all been removed, the windows removed, the back deck removed; and they included a photo of the Stop Work Order attached to the residential property.

The Landlords submitted photographs, including:

- Nail holes, plugs, and scratches in the walls;
- Scratched and splintered interior door;
- Chip in the bathtub;
- Missing tile in the bathtub surround;
- A broken kitchen drawer;
- Old, worn kitchen cupboards and counter;
- A missing light switch cover;
- Fist-sized holes in panelling; and
- Tea towels jammed in between where the siding meets the building;

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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 (3) of the Act states that the director may excuse the landlord from paying the tenant the amount required under section 51 (2), if in the directors' 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
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> (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.

In the Two Month Notice dated May 27, 2021, the Landlord indicated that the Landlord or a close family member, intends to occupy the rental unit.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member, the rental unit was completely renovated, including new exterior siding and a new back deck, as well as numerous interior renovations.

It took the Landlords approximately eight months to move into the residential property after the tenancy ended. They said that they were delayed, because of a three-month stop work order and because of Covid. However, other than noting a delay in receiving appliances, they did not specify which trades or other aspects of their renovation were delayed by Covid. The stop work order delayed the Landlords by three months, but that left five months of other delays before they moved in.

I accept the evidence that the Landlords did not use the rental unit for the purposes stated on the Two Month Notice within a reasonable amount of time. I find that a main

reason for the delay was the extent of the renovations made by the Landlords. They did not explain why it was necessary to replace the exterior finishing of the residential property to “make it livable”. They submitted photographs showing a lot of holes in the walls of the residential property, old kitchen cupboards, and a small chip in the bathtub.

However, they did not provide photographs of after their renovations to show that only minor modifications were made. Based on the evidence before me overall, I find I support the Tenants’ assertion that the Landlords gutted the house, replaced siding, windows, plumbing, electrical, and an array of other changes. I find the Landlords gave the Tenants the wrong eviction notice, and that the Landlords failed to fulfill the purpose of the Two Month Notice by moving in within a reasonable period of time after the tenancy ended. I find that the Landlords did not have sufficient evidence of extenuating circumstances that delayed them in fulfilling the purpose of the Two Month Notice.

Consequently, and pursuant to section 51 (2) of the Act, I find that the Tenants are entitled to a monetary award of $24,000.00, the equivalent of 12 times the monthly rent of $2,000.00 payable under the tenancy agreement.

As the Tenants are successful in their Application, they are also entitled to recovery of the **$100.00** filing fee from the Landlords, pursuant to section 72 of the Act. The Tenants other claims are dismissed with leave to reapply.

Pursuant to sections 49, 51 and 67 of the Act, I grant the Tenants a **Monetary Order** from the Landlords of **$24,100.00**. This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants are successful in their Application for a monetary order of $24,000.00 for damage or compensation from the Landlords related to a Notice to End Tenancy for Landlord’s Use of Property. The Tenants provided sufficient evidence that the Landlords failed to fulfill the stated purpose of the Two Month Notice within a reasonable time after the effective date of the Notice. Further, the residential property was not used for the stated purpose for at least six months’ duration, beginning within a reasonable period after the effective date of the Two Month Notice.

The Tenants are also awarded recovery of their **$100.00** Application filing fee from the Landlords.

I grant the Tenants a **Monetary Order** of **$24,100.00** from the Landlords pursuant to section 67 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 30, 2022

Residential Tenancy Branch