# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNETC, FFT, MNDCL-S, MNDL-S, FFL

Introduction and Preliminary Matters

This hearing dealt with cross applications filed by the parties. On December 8, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 17, 2022, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 19-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:49 PM. The Landlord did not dial into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant was the only person who had called into this teleconference.

As the Landlord did not attend the hearing by 1:49 PM, I find that the Landlord's Application for Dispute Resolution has been abandoned. As such, the Landlord's Application is dismissed without leave to reapply.

The Tenant advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on December 10, 2021 (the registered mail tracking number is noted on the first page of this Decision). She testified that the tracking history indicated that the Landlord received this package on December 13, 2021. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

As well, she indicated that she served additional evidence to the Landlord on June 28, 2022, by posting it to the Landlord's door. However, as this evidence was served late, and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence has been excluded and will not be considered when rendering this Decision.

In addition, she advised that she was never served with the Landlord's Notice of Hearing package and that she did not even know that the Landlord had filed a separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Four Months' Notice to End Tenancy For Renovation, Repair or Conversion of a Rental Unit (the "Notice")?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on May 1, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 31, 2021, as a result of being served the Notice. Rent was established at $1,995.00 per month and was due on the 15th day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that she had a previous hearing against the Landlord regarding the return of her security deposit and pet damage deposit, where it was determined that she was successful. Ultimately, she was subsequently awarded double these deposits.

With respect to her current Application, she testified that she was served the Notice when it was taped to her door on February 23, 2021. The reason that the Landlord checked off for serving the Notice was to “Perform renovations or repairs that are so extensive that the rental unit must be vacant.” It was noted on the Notice that the effective end date of the tenancy was August 31, 2021. While this Notice was not signed by the Landlord, she advised that the Landlord also posted a letter with the Notice, dated February 23, 2021. This signed letter outlined the Landlord’s intentions and reasoning for service of the Notice.

She stated that after giving up vacant possession of the rental unit, she would drive by the property multiple times, and there were newer vehicles in the driveway. She submitted that she texted a tenant that was still living on the property on September 15, 2021, and this person confirmed that a new tenant had moved into the rental unit, despite the Landlord indicating that extensive renovations or repairs would be undertaken on the rental unit as per the Notice. A text message confirming this exchange was provided as documentary evidence.

She submitted that she did not observe any extensive renovations or repairs that had been started on the rental unit. As well, she stated that she would occasionally return to the rental unit to retrieve her mail, and she would see mail in the name of the new tenant.

As the Landlord did not use the property for the stated purpose on the Notice, she is seeking compensation in the amount of **$23,940.00**, which is calculated as $1,995.00 X 12 months.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49.2 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where "the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs, the renovations or repairs require the rental unit to be vacant, the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located, and the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement." I find it important to note that the *Act* changed on July 1, 2021, which required the Landlord to make an Application to the Residential Tenancy Branch first, in order to obtain permission to end a tenancy in this manner.

However, the undisputed evidence is that the Notice was served on February 23, 2021, which was prior to the change in legislation. At the time the Notice was served, Section 49(6) permitted the Landlord to serve this type of Notice to the Tenant to end a tenancy for demolition, renovation, or conversion of the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord served the Notice to the Tenant, but it is not signed by the Landlord. However, as the Landlord also served a signed letter with the Notice, dated February 23, 2021, that further elaborated on her reasons for service of the Notice, I am satisfied that the Landlord's intentions for serving the Notice were clearly evident. As this accompanying letter was

signed, as the contents of the letter are consistent with the reason on the Notice, and as there can be no doubt for why the Landlord served the Notice, I am satisfied that all of the requirements of Section 52 have been met and that this was a valid Notice.

The second issue I must consider is the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated February 23, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***51*** *(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*
>
> > *(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.*

At the time the Notice was served, it appeared as if the Landlord's intention was for her to perform extensive renovations or repairs to the rental unit that required it to be vacant, and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenant and after she gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, excerpts from the past, relevant Policy Guideline # 50 state the following:

> Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not: taken steps to accomplish the stated purpose for ending the tenancy

> within a reasonable period after the effective date of the Notice to End Tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).
>
> A step is an action or measure that is taken to accomplish a purpose. What this means depends on the circumstances. For example, if a landlord ended a tenancy to renovate or repair a rental unit, a step to accomplish that purpose might be: Hiring a contractor or tradesperson; Ordering materials required to complete the renovations or repairs; Removing fixtures, cabinets, drywall if necessary for the renovations or repairs. Evidence showing the landlord has taken these steps might include employment contracts, receipts for materials or photographs showing work underway.
>
> A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are: so extensive that the rental unit must be vacant in order for them to be carried out, and the only manner to achieve that vacancy is by ending the tenancy. If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the Landlord to conduct renovations or repairs to the rental unit that were so extensive that it required vacant possession of the rental unit. As a note, the burden of proof was on the Landlord, and she did not attend the hearing to provide submissions with respect to this situation. However, as it is undisputed that the Landlord did not undertake these extensive repairs or renovations, but simply re-rented the unit immediately, I am satisfied that the Landlord failed to use the property for the stated purpose after the effective date of the Notice. As such, I find that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$23,940.00**.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover $100.00 filing fee paid for this Application.

As the Landlord's Application was dismissed in its entirety, the Landlord was not successful in her claims. As such, I find that the Landlord is not entitled to recover $100.00 filing fee paid for this Application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **$24,040.00** in the above terms, and 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.

The Landlord's Application is dismissed without leave to reapply.

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: July 13, 2022

Residential Tenancy Branch