



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing originally convened on September 27, 2022 and was adjourned to October 7, 2022. This decision should be read in conjunction with the September 27, 2022 Interim Decision. This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. An interpreter attended the hearing on behalf of the landlord and affirmed to translate to the best of her ability. The landlord was represented by counsel and an articulated student.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service of Tenants' Documents

Both parties agree that the landlord was served with the tenants' application for dispute resolution and evidence in person on or around February 19, 2022. I find that the landlord was served with the above documents in accordance with section 89 of the *Act*.

Issue to be Decided

Are the tenants entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and ended on or around July 2, 2021, pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Monthly rent in the amount of \$2,850.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenants were personally served with the Notice on April 28, 2021. The tenants testified that their daughter, who was under 19 at the time, was personally served with the Notice on May 3, 2021.

The Notice was entered into evidence and states that the tenants must vacate the subject rental property by July 2, 2021 because the landlord or the landlord's spouse will occupy the unit.

The tenants testified that the landlord lied to them about why they were being evicted. The tenants testified that the landlord did not move in and instead completed a major renovation to the basement and then listed the property for sale.

The tenants entered into evidence screenshots of property listings for the subject rental property taken in February of 2022. The tenants entered into evidence email letters from their neighbours dated between January 20, 2022 and February 5, 2022 which state that at the time of writing, no-one had moved into the subject rental property since the tenants were evicted and that the subject rental property was renovated in that time.

The landlord testified that after the tenants moved out, she spent \$60,000.00 on renovating the subject rental property to her taste. The landlord testified that she put the subject rental property up for sale to test the market and to determine what the market value of the subject rental property was, but she never intended to sell the subject rental property.

The landlord testified that she moved into the subject rental property at the end of February 2022, in the “20’s” but could not recall on what date specifically.

Counsel submitted that section 49(3) of the *Act* allowed the landlord to evict the tenants because the landlord intended in good faith to occupy the rental unit and did so occupy the unit after the renovations were completed. Counsel submitted that the tenant has not provided any evidence that the subject rental property was sold or rented out after the tenants vacated the property.

Counsel submitted that it is a fact that the subject rental property was renovated after the tenants moved out and that at the end of February 2022, the landlord moved in.

Counsel submitted that section 51(2)(b) of the *Act* states that the subject rental property must be used for the purpose stated on the Notice within a reasonable period after the effective date of the Notice. Counsel submitted that a reasonable period is a relative term which depends on the landlord’s intention to move in and availability of labour and materials and other requirements of renovations.

Counsel submitted that the landlord had financial problems because of COVID and the renovation may have taken longer than usual. Counsel submitted that construction may have been delayed by material availability.

Counsel submitted that the tenants have not proven their claim and are not entitled to the damages sought.

Analysis

Based on the testimony of both parties, I find that this tenancy ended pursuant to the Notice.

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(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 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 states:

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

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 on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days....

[Emphasis added]

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. **A landlord cannot renovate or repair the rental unit instead.** The purpose that must be accomplished is the purpose on the notice to end tenancy....

[Emphasis added]

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Based on the testimony of both parties, I find that landlord moved into the subject rental property at the end of February 2022, after being served with the tenants' Application for Dispute Resolution. I find that before moving in, the landlord completed a major renovation to the subject rental property.

I do not accept counsel's submissions that the end intent of the landlord, that being to move into the subject rental property some seven plus months after the tenants were evicted and after major renovations were completed, permitted the landlord to end the tenancy pursuant to section 49(3) of the *Act*.

As stated in PG #50, a landlord cannot renovate or repair the rental unit after evicting tenants under section 49(3) of the *Act*. I find that in completing the renovations instead of moving in within a short period of time such as 15 days of the effective date of the Notice (as suggested in PG #50), the rental unit was not used for the purpose stated on the Notice.

I find that the landlord did not take steps within a reasonable period after the effective date of the Notice to move in. As stated above, I find that moving in seven months after the effective date and after a major renovation is completed is not reasonable when a tenancy is ended for the landlord or landlord's spouse to move in.

Pursuant to section 51(2) and section 51(3) of the *Act* I find that unless the landlord can prove that extenuating circumstances prevented the landlord from completing the reasons for the eviction set out in the Notice, the tenant is entitled to an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Extenuating Circumstances

Section 51(3) of the *Act* states:

(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.

The landlord testified that she did not move in right after the tenants vacated the subject rental property because she wanted to renovate the property to her taste. I find that electing to renovate the subject rental property to the landlord's taste is not an extenuating circumstance, it was a choice, that has legal consequences.

I find that the landlord has not proved, on a balance of probabilities, that but for renovation delays caused by COVID 19, she would have moved into the subject rental property within a short period of time after the effective date of the Notice because no corroborating documentary evidence was accepted for consideration and no specifics were provided. I also find that given the quantum of the renovation, the renovation was unlikely to have been completed within a short period of time after the effective date of the Notice, with or without material or labour delays caused by COVID 19.

As stated in PG #50, the landlord was not permitted to complete major renovations instead of occupying the subject rental property within a short period of time after the effective date of the Notice. I find that the landlord knew or ought to have know that major renovations would prevent her from moving into the subject rental property within a short period of time after the effective date of the Notice. I find that the landlord's choice to complete major renovations instead of moving in within a short period of time after the effective date of the Notice does not constitute an extenuating circumstance under section 51(3) of the *Act*.

Pursuant to section 51(2) of the *Act*, I find that the tenants are entitled to a monetary award equivalent to 12 months' rent, in the amount of \$34,200.00.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$34,200.00.

The tenants are provided with this Order 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.

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: October 7, 2022

Residential Tenancy Branch