



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT, MNDL, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”) for:

The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an

opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Are the landlords entitled to a monetary order as compensation for damage or loss because of this tenancy?

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

Is either party entitled to the recovery of the filing fee?

Background and Evidence

AM gave the following testimony. The tenancy had a monthly rent payable of \$1600.00 due on the first of each month. On September 29, 2021 the landlord served the tenant with a Two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by December 1, 2021. The tenant moved out on November 15, 2021

The ground for the Notice was :

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

AM testified that the tenant works in the area and drives by the home on a regular basis. AM testified that about a month after the tenant moved out, he drove by and saw yellow fencing and machinery to demolish the home. AM testified that the home was demolished in February. AM submits that the landlord issued the notice in bad faith and that they did not move into the home as stated on the notice resulting in the tenant being entitled to twelve months rent along with the recovery of the filing fee. AM testified that the landlords didn't spend the money for asbestos remediation or repairs and therefore are not entitled to those claims and more specifically, since they acted in bad faith only the tenant is entitled to a monetary award.

CW gave the following testimony. CW testified that when they received the home from the tenant, it was damaged and in very poor condition. WP testified that they had moved all of their items into the basement and that they fully intended to move in but when they viewed the tenant's suite which was the main floor of the home, they were shocked to see the condition of the home. WP testified that after having a contractor inspect the damage it was brought to his attention that since the home was from the early 1970's, asbestos remediation was required.

CW testified that the cost for asbestos remediation was estimated at \$12,075.00 and the repairs would cost \$16,350.00 for a total cost of \$28,425.00. CW testified that since she was expecting a baby in the near future and had concerns about asbestos, she and her husband decided not to repair the home and decided that it would be better to demolish it and build a new home.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the reason provided for the tenancy to end is that the owner or a close family member will occupy the rental unit. I asked the landlords if they could provide some documentation to show that the home was uninhabitable, they could not. The landlords stated that they only applied for permits to demolish the home after the tenant moved out and that demolish wasn't pre planned but, did not provide that documentation. CW submits that it didn't make sense to spend over 28 thousand dollars on repairs but made more sense to build a new home. I find this statement quite the opposite and nonsensical. It is illogical to state that spending hundreds of thousands of

dollars was a better alternative than spending 28 thousand dollars. WP's submission that after the asbestos remediation was done "there was nothing left" is also highly suspect and without sufficient evidence to corroborate that argument. The landlords did not provide sufficient proof that the home could not be salvaged. WP stated that they moved all their belongings into the basement portion of the home and then moved them back out immediately. They did not provide any evidence that they could not live in the basement while the work in the upstairs portion of the home was done.

Section 51(3) 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 may not be extenuating. An example provided of a situation that may be considered extenuating is: A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

I find that the circumstances before me do not meet the reasonable characterization of extenuating circumstances and consequently the landlords are not excused from their obligation under section 51(2) of the Act to pay the tenant an amount equivalent to 12 times the monthly rent of \$1,600.00 in the amount of \$19,200.00. The tenant is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$19,300.00. I grant the tenant an order under section 67 for the balance due of \$19,300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety 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: October 20, 2022

Residential Tenancy Branch