



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51(2) of the Act.

The hearing was conducted via teleconference. The Respondent and the Applicant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Applicant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on June 4, 2022, Canada Post Tracking Number on cover sheet of decision, Respondent confirmed receipt, deemed served on June 9, 2022; and,
- the Respondent's evidence package served by registered mail on January 5, 2023, Canada Post Tracking Number on cover sheet of decision, Applicant confirmed receipt, deemed served on January 10, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issue to be Decided

Is the Applicant entitled to an Order for compensation from the Respondent related to a Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on July 1, 2019. Monthly rent was \$1,180.00 payable on the first day of each month for the upper level suite in the residential property. A security deposit of \$590.00 was collected at the start of the tenancy and was returned to the Applicant at the end of the tenancy. The tenancy ended on October 31, 2021.

The reason to end tenancy noted on the Respondent 's Four Months' Notice was that the Respondent was going to perform renovations or repairs that are so extensive that the rental unit must be vacant. It is anticipated that the rental unit will need to be vacant for two months to complete all the renovations or repairs. No permits and approvals are required by law to do this work. The effective date of the Four Months' Notice was September 30, 2021.

The Applicant testified that the Respondent said he was renovating the house, then he was going to sell it because it was too much work for the Respondent's wife. In March 2022, the Applicant saw a for rent posting for the basement suite of the residential property. The Applicant noted that not many renovations were done in the basement suite.

The Respondent testified because there was a continuous issue with the plumbing in the rental unit, the Respondent undertook extensive renovations. The Respondent uploaded picture evidence that demonstrated all the renovations, e.g. changing the copper plumbing to pex piping, redoing all the flooring and painting the whole upper suite. The Respondent pointed out that concrete work still remains to be completed, but because they ran out of time in the season, the concrete work is put off until the summer of 2023.

The Respondent noted that the video evidence that the Applicant uploaded in her evidence was for when he was looking for a new tenant in the basement suite of the residential property. This unit was not the Applicant's rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Tenant's compensation: section 49 notice

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- (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 the landlord or purchaser, as applicable, does not establish that*
 - (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
 - (b) *the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

The stated purpose in the Respondent's Four Months' Notice was to complete renovations that were so extensive that the rental unit needed to be vacant. The Respondent completed extensive renovations involving changing all the copper piping to pex piping, installing new plumbing fixtures, redoing all the floors and painting the whole rental unit. I find that the Respondent has completed the extensive renovations with still some last concrete work that will be finished in the summer of 2023. Based on the totality of the Respondent's evidence, I find that the applicant's claim has not been proven on a balance of probabilities and I dismiss the applicant's application.

Conclusion

The applicant's application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 31, 2023

Residential Tenancy Branch