



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNETC, FFT

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Both parties acknowledged receipt of evidence submitted by the other party.

Issue(s) to be Decided

Is the tenant entitled to compensation and to the return of the filing fee?

Background and Evidence

The tenancy started in 2004 and ended on June 03, 2022, pursuant to a notice to end tenancy for landlord's use of property. The monthly rent at the end of tenancy was \$1,130.00 payable on the first of each month.

On April 19, 2022, the tenant was served with a two month notice to end tenancy for landlord's use of property. The effective date of the notice was June 30, 2022. The reason for the notice was that the landlord or a close family member intended to occupy the rental unit.

The tenant testified that he received the last month of rent-free stay and also received the return of the security deposit in full. The tenant filed into evidence a letter of reference written by the landlord which stated that the tenant was quiet, clean, organized and took care of the grass. The landlord stated that the tenant left the home in an 'organized and neat' state.

The landlord testified that after the tenant moved out, she assessed the home and found that multiple areas needed renovation, repair and updating. The landlord hired a trades person to complete the job and stated that it was not complete till early December. The landlord's sister who is also an owner moved in on December 21, 2022.

In his written submission the tenant stated that as of January 10, 2023, there was no one living at the rental unit. The landlord replied that her sister (owner) moved in on December 21, 2022, and is currently occupying the rental unit.

The landlord stated that at the time the notice to end tenancy was served, her sister intended to move in, but due to the condition of the home and the time it took to complete repairs and renovation, she was unable to do so until December 21, 2022.

Analysis

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy for landlord's use of property. Section 51 of the *Residential Tenancy Act* sets out compensation requirements for landlords who end a tenancy for landlord's use of property.

Sections 51 and 51.4 of the *Residential Tenancy Act* require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.

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 accomplish the stated purpose for ending the tenancy within a reasonable period.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. 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, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

In this case the landlord's sister (also an owner of the property) moved in more than six months after the end of tenancy. The landlord testified that the renovation work took longer than expected.

Under section 51.1(2) of the RTA, the director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control., The onus is on the landlord to establish there are extenuating circumstances.

An example of an extenuating circumstance is:

A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies.

In this case, the landlord did not provide any evidence to support extenuating circumstances or any proof of the need for major repairs that required the unit to be vacant. The landlord testified that the unit was without a toilet while it was being replaced and that in early December 2022, there was a break in which delayed her sister's move in plans.

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Based on the testimony of both parties, I find that the owner of the rental property moved in, more than six months after the tenancy ended. The landlord stated that the renovations did not get completed in a timely manner. Most of the work done as described by the landlord did not require the unit to be vacant for this length of time. The landlord returned the security deposit to the tenant and stated that the unit was organized and neat and did not mention or describe the need for any major repairs that would require the unit to remain vacant while being carried out.

Accordingly, I find that the landlord did not move in, within a reasonable amount of time and did not have extenuating circumstances that prevented the landlord from moving into the rental unit within a reasonable amount of time.

Since the unit was not used for the stated purpose within a reasonable amount of time, I find that the landlord must pay the tenant \$13,560.00 which is the equivalent of rent for twelve months. Since the tenant has proven his case, he is also entitled to the filing fee of \$100.00.

Overall, the tenant has established a claim of \$13,660.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims 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: February 12, 2023

Residential Tenancy Branch