



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNETC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on June 11, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On June 08, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that she did not realize these documents needed to be served to the Landlord and, as such, it was not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On January 15, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on January 15, 2023. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 24, 2023 and January 25, 2023, the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email. The Landlord stated that this evidence was received on January 25, 2023. As the Landlord acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenant and the Landlord agree stated that the Tenant moved into the rental unit in 2016 and that they periodically signed new tenancy agreements.

The parties agree that at the end of the tenancy the monthly rent was \$1,000.00.

The Tenant and the Landlord agree that in October of 2021 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use which declared that the rental unit must be vacated by January 31, 2022 because the unit was going to be occupied by the Landlord or the Landlord's spouse.

The parties agree that the rental unit was vacated on November 30, 2021.

The Landlord stated that:

- When the Two Month Notice to End Tenancy for Landlord's Use was served, he planned to move into the rental unit;
- He moved into the rental unit sometime in the middle of January of 2022;

- He moved out of the rental unit sometime in the middle of February of 2022;
- After he moved into the rental unit he concluded that renovations were required, which included repairing the roof and chimney, which were leaking, repairing the exterior siding of one wall which had been missing since prior to the start of this tenancy, replacing leaking plumbing, replacing the furnace, and replacing the carpet;
- He never moved back into the rental unit after the renovations were complete;
- His cousin moved into the rental unit at the end of September of 2022; and
- His cousin is still living in the rental unit.

The Landlord initially stated that the renovations began in June of 2022 and were completed in July of 2022. After the Tenant referred to receipts submitted in evidence, the Landlord stated that the renovations were completed in September of 2022.

The Tenant does not dispute that the rental unit was renovated and that repairs were completed in September of 2022.

The Landlord stated that in September of 2018 the Tenant told him the roof and chimney were leaking and that she would fix it, although she did not specify how those repairs would be made. He stated that the Tenant never told him the repairs were complete.

The Tenant stated that the Landlord was aware of many of the deficiencies with the rental unit. She stated that she did not tell the Landlord that she would repair the roof/chimney, although she did tarp those areas in an attempt to eliminate water egress.

The Tenant does not dispute that repairs were needed, although she notes that she lived in the house while those repairs were needed. She submits that when she lived in the house the furnace did not work.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was paying monthly rent of \$1,000.00 at the end of this tenancy.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required her to vacate the rental unit by January 31, 2022 and that this Notice declared that the rental

unit was to be occupied by the Landlord or the Landlord's spouse.

On the basis of the undisputed evidence, I find that the rental unit was vacated on November 30, 2021.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Even if I accepted the Landlord's testimony that he lived in the rental unit for approximately one month at the beginning of 2022, I would conclude that the Landlord did not live in the house for at least six months. In reaching this conclusion I was influenced by the Landlord's admission that he only lived in the unit for approximately one month prior to starting the renovations/repairs; he never moved back into the rental unit after he completed renovations/repairs in September of 2022; and that it is currently occupied by his cousin.

While in some circumstances I would find it reasonable that a landlord would delay moving into a rental unit because of the need to renovate, that is irrelevant in these circumstances as the Landlord did not move back into the rental unit when the renovations were complete.

As the Landlord did not live in the rental unit for at least six months and more than a year has passed since the effective date of the Two Month Notice to End Tenancy for Landlord's Use, I find that the Landlord is obligated to pay the penalty imposed by section 51(2)(a) of the *Act*, which is \$12,000.00. (12 times the monthly rent)

The Landlord presented no evidence during these proceedings which caused me to conclude that extenuating circumstances prevented him from living in the unit for at least six months. I find that the need for repairs does not constitute extenuating circumstances, particularly when the Landlord knew, or should have known, the repairs were required. I specifically note that a great deal, if not all, of these repairs could have been completed while the Landlord was living in the unit, even if he had to vacate for short periods of time to facilitate repairs. In reaching this conclusion I note that the Tenant lived in the rental unit while the roof/chimney was leaking, the exterior siding of

one wall was missing, and the furnace was not working.

I find that the Tenant's application has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

The Tenant has established a monetary claim of \$12,100.00, which includes \$12,000.00 pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$12,100.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of the 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 *Act*.

Dated: February 10, 2023

Residential Tenancy Branch