Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of $11,160.00 from the Landlord related to a Four Month Notice to End Tenancy for Landlord's Use of Property dated June 1, 2021 ("Four Month Notice"); and to recover her $100.00 Application filing fee.

The Tenant's advocate, N.V. ("Advocate"), the Landlord, and an agent for the Landlord, B.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Parties' respective evidentiary submissions on each other. The Landlord said he served the Tenant with his evidence by registered mail, and he provided a Canada Post registered mail tracking number to support this claim. The Advocate said that the Tenant had not received the Landlord's evidence; however, she also said that the Tenant had not been home to pick up her mail. I find that this does not indicate that the Landlord failed to serve the Tenant with his evidence. The Landlord said he received the Tenant's evidence and had time to review it. Based on the evidence before me, I find that both Parties were adequately served with each other's evidence, pursuant to the Act.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2011, with a final monthly rent of $930.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $400.00, and no pet damage deposit. They agreed that the Landlord still holds the Tenant's security deposit, however, the Tenant did not apply for recovery of the security deposit in this Application.

The Parties agreed that the Landlord served the Tenant with a Four Month Notice, which was signed and dated June 1, 2021, although it has the Landlord's address in the rental unit address. However, this hearing is not about the validity of the Four Month Notice. The Parties agreed that the Four Month Notice was served in person on June 1, 2021, with an effective vacancy date of October 1, 2021. It was served on the ground that the Landlord intended to do renovations, although the Landlord did not check off this ground on page two of this Notice. Rather, the Landlord made the following notes in the description portion of the second page of the Four Month Notice:

> Chimney modification
> New gas stove
> [indecipherable handwriting]

Under "Planned Work" the Landlord wrote:

> Tear down wall to reduce sound, [indecipherable word] sound proof barrier between [indecipherable word], Add a window in bedroom to create an egress access in case of emergency [indecipherable word], repaint whole suite install new heater in bedroom.

In the hearing, the Advocate explained the Tenant's claims, as follows:

> It is our understanding that major renos were not done and haven't been done. In the past he has expressed his financial situation – struggling, the suite is L-shaped, hugs two sides of house. On living room wall, a quasi opening to second bedroom – no egress. He had expressed he could open it up. He had all kinds of ideas.
>
> March 2021, [the Landlord] told [the Tenant] that he was changing the heating system, and required workmen in the suite. [The Tenant] was alright with that.
>
> Gas fittings were put in for a gas fire place, but that was never done. [The Tenant] was home with Covid so no one could come in. It was never rescheduled.
>
> It's not a matter of taking it personally – it is standing on your honour.
> He obtained no permits for major renovations.
>
> Even though he had gas permits, it's only from the gas company – not the municipality. Any work could have been done while [the Tenant] was residing there – bad faith.

I asked the Landlord why he served the Four Month Notice and he said:

> Because I had some alterations and renovations to be done – we were going to open the ceiling. The fireplace, the new heater downstairs by the fire place, but because of the way I was thinking it didn't happen. The gas man said it couldn't. So we had to remove the line through the bathroom and hallway to the outside wall and bring to the living room.
>
> When I changed the heater in the living room, I don't think I left her without a heater.

I asked the Landlord what renovations were needed in the rental unit, and he said:

> I had to repaint the whole suite – it needed paint bad. I had to do some tile work. When the men run the lines through the ceiling – they leave the ceiling open for a week in case an inspector comes. That had to stay open. The pipe runs through the bathroom and the hallway - it was quite a mess.
>
> I did all the renovations myself and took me a couple months.

The Landlord said he had permits for the plumbing and from the gas company.

The Parties agreed that the result of the Landlord's renovations was to make the rental unit into a larger two bedroom, two bathroom suite.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The undisputed evidence before me is that the Tenant was issued a Four Month Notice, pursuant to section 49.2 (1) (b) of the Act. The Four Month Notice did not indicate the ground on which the Landlord intended to rely on to issue the Notice, although he described the work that he intended to accomplish on the Four Month Notice. This description included adding sound barriers, a window to a bedroom, and painting the entire suite. However, the Landlord did much more than that, turning the one-bedroom/one bathroom suite into a two-bedroom/two bathroom suite, which he then rented for significantly more than what the Tenant paid him in rent.

Section 51.4 of the Act states:

> **51.4** (4) Subject to subsection (5), the landlord 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 does not establish that the renovations or repairs have been accomplished within a reasonable period after the effective date of the order.

In this case, the Landlord performed different renovations than what was set out on the Four Month Notice.

Policy Guideline #50, "Compensation for Ending a Tenancy", states:

> **. . .**
>
> **Accomplishing the Purpose/Using the Rental Unit**
>
> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit

> for that stated purpose for at least 6 months.
>
> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.
>
> . . .
>
> [emphasis added]

In this case, the Landlord did much more than he said he would do in the Four Month Notice. Essentially, the Landlord evicted the Tenant so that he could enlarge the rental unit and charge more for rent. The Landlord confirmed that he has rented the unit out for $1,900.00, which is $970.00 higher than what the Tenant paid when she was evicted.

I find that the Landlord did not complete the minor repairs that he said he was going to do, but rather, he turned the unit into a larger suite with more features and raised the rent substantially.

I accept the evidence that the Landlord did not use the rental unit for the purposes stated on the Four Month Notice. Consequently, I award the Tenant with **$11,160.00**, the equivalent of 12 times the monthly rent of **$930.00** payable under the tenancy agreement, pursuant to section 67 of the Act.

As the Tenant was successful in her application, I also award her recovery of her **$100.00** Application filing fee, pursuant to section 72 of the Act. I, therefore, grant the Tenant a **Monetary Order** from the Landlord of **$11,260.00**, pursuant to section 67 of the Act, which Order must be served on the Landlord.

Conclusion

The **Tenant is successful** in her Application for compensation of 12 months of rent or **$11,160.00**, further to being served with a Four Month Notice to End Tenancy for Landlord's Use of Property. Given her success, the Tenant is also awarded her **$100.00** Application filing fee. The Landlord failed to fulfill the purpose of the Four Month Notice, which was detailed on that Notice.

I grant the Tenant a **Monetary Order** from the Landlord of **$11,260.00**, representing 12 months of rent and recovery of the $100.00 Application filing fee. This Order must be

served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

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 02, 2023

Residential Tenancy Branch