



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 27, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the Act
- I want compensation for my monetary loss or other money owed

The Landlord (agent of) was present at the hearing along with the Tenant and his advocate. All parties provided affirmed testimony. No service issues were raised, and both parties confirmed receipt of each other's documentation and evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant filed an application against two respondents, one being the Landlord, as named on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice), the other being a company that the Landlord owns. I note the Notice indicates that the Landlord, M.K., was the one who requested possession of the rental unit because he or close family would be moving in.

The Landlord (agent of), noted that M.K. assigned the sale contract to a company which he owns, and as a result, M.K. never became the legal and registered owner of the unit. A copy of the Land Title search confirms that it was M.K.'s company who ultimately became the owner of the property, not M.K.

I acknowledge the above. However, I find it is the party, as named on the "purchaser" on the second page of the Notice who is liable for any potential compensation under section 51(2), and it is this entity who is responsible for following through with the grounds selected on the Notice. This entity may not change the grounds after the Notice was issued, nor can they assign their way out of obligations under the Act. I hereby amend the application to reflect the only legal entity responsible for compensation related to the Notice (the person who was named on the Notice as the purchaser, M.K.).

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?
- Is the Tenant entitled to compensation for other money owed?

Background and Evidence

The Tenant stated that monthly rent was set at \$1,500.00 at the end of the tenancy. The Tenant provided a copy of the Notice into evidence, which shows that it was issued on March 11, 2021, with an effective date of June 8, 2021. The Tenant disputed the Notice and a hearing was held on or around June 28, 2021. The Landlord was successful, and obtained an order of possession following that hearing.

The Tenant moved out of the rental unit on or around August 1, 2021. The Tenant is seeking the following 2 items:

- 1) \$18,000.00 – 12 month's rent as compensation pursuant to section 51(2) of the Act

The Landlord's Agent explained that the Landlord bought this house so that his daughter could move into the property, after some renovations were completed. The Landlord's Agent explained that the Landlord was initially supposed to take possession of the house on May 4, 2021, and it was extended until August 7, 2021, largely to accommodate the Tenant's request for more time to move. The Landlord's Agent stated that after the Tenant moved out, they noticed there were more severe structural issues

than they anticipated, which meant there was more work that was needed to be done before the Landlord's daughter moved in. The Landlord's Agent stated that the Landlord's company took possession of the house on August 4, 2021, and he acknowledged that there may have been some "buyer's negligence" with respect to not fully inspecting the house, and all components, prior to agreeing to buy it. The Landlord's Agent stated that the owner is a geotechnical engineer and started to do some work on the house after the Tenant vacated, and the scope of work began to snowball when they kept finding more issues. The Landlord's Agent noted that after several months of doing renovations to the house, the city issued a stop work order sometime in February 2022 because the Landlord did not obtain the necessary permits to complete the work they were doing. The stop work order documents note that the Landlord was doing the following at the time:

- Interior has been completely gutted and has areas with new framing;
- New wiring throughout;
- New water supply lines and drain pipes throughout;
- Approximately 40% of the foundation has been replaced;
- Rear section (west) side of the building was demolished and reframed;
- The roof style was changed from shed to gable and appears to have increased in height;
- New deck and stairs off the main floor at the back (west) side have been installed;
- Front porch has been reframed, new posts, new beam, new stairs and new guards;
- Exterior walls have been insulated with spray foam. This is likely unacceptable as the north and south walls appear to be within 1.2m of the property line and will require non combustible insulation;
- Roof rafters have been insulated with spray foam. This is noncompliant as venting in the attic is required.

The Landlord's Agent further noted that they have since applied for permits, but are awaiting approval from the city, and currently, there is no one occupying the house.

The Tenant pointed out that the Landlord, nor any of his family members, ever moved in, and the house still sits empty, with permits pending. The Tenant opined that the Landlord ought to have known there were structural issues going on with the house, since he brought them up at the hearing (when disputing the Notice). The Tenant stated that the Landlord is involved in the engineering and foundation construction industry as an engineer, so he should understand the issues with these types of older houses. The Tenant pointed to the photos taken at the end of the tenancy to show the significant structural issues with the porch, the footings, and the foundation, all of which were obvious at the time the house was sold.

The Landlord's Agent acknowledged that the Landlord also has applied to add a secondary suite to the building.

2) \$5,000.00 – Aggravated damages

The Tenant stated that he is also seeking aggravated damages because the landlord committed fraud by saying that he was going to move in, when it was never possible, given the condition of the house. The Tenant pointed out that he went through a lot of hardship with this eviction because he had lived there for 30 years, and he was going through a medical issue at the time, where he was trying to recover from surgery right when the Landlord asked him to move out. The Tenant stated that he had to liquidate many of his belongings and give many of them away because he had to downsize from this whole house to a basement suite.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

***ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S
USE OR FOR RENVOATIONS AND REPAIRS***

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

(3) 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.*

As noted above, and generally speaking, when a tenancy ends by way of a Notice under section 49 of the Act, the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, otherwise the Landlord may be required to pay compensation pursuant to section 51(2) of the Act, if not excused under section 51(3).

In this case, the Landlord's Agent acknowledged that the Landlord's daughter hasn't moved into the property, for a variety of reasons, which was the basis for the Notice. I find this is a breach of section 51(2) of the Act. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I acknowledge that the house had structural issues, and issues with other aging building components (wiring, plumbing, porch, foundation). I also acknowledge that not all of these issues were known at the time the Notice was issued. However, I also note the Landlord's agent acknowledged that the Landlord did not do a full house inspection such that they understood the full scope of issues with the house. While I can appreciate that not all of the issues with the house were known, at the time the Notice

was issued, I do not find the issues discovered afterwards (leading to extensive renovations) were such that they qualify as an extenuating circumstance. In making this finding, I note the Landlord could have done more due diligence, prior to issuing the Notice, to understand the full scope of renovations, repairs (and potential permits), particularly given the age of the house (approximately 100 years old), and considering the fact that the Landlord is involved in the construction and engineering industry. I do not find the issues with the house, or the permitting issues, amount to “extenuating circumstances”, such that it would be unreasonable or unjust for the Landlord to pay the compensation. The circumstances appear to have been caused by the Landlord’s actions and inactions regarding the inspection and permitting process.

I award the Tenant \$18,000.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,500.00.

With respect to the Tenant’s claim for aggravated damages, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

An arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

I note the Tenant is seeking this amount because he was in a medically sensitive state at the time the eviction notice was issued. I note the Tenant was physically limited in what he could do during April – July of 2021, which were the months leading up to the end of the tenancy. I acknowledge that the Tenant lived in the unit for 30 years, and that he would have had many belongings to pack and move at a time when he was not physically able bodied, due to a surgery. I note this caused the Tenant to have to get rid of many of his belongings, and to downsize at a time when he was struggling. However,

I am also mindful that the Landlord extended the completion date on the purchase and sale agreement from May 4, 2021, to June 7, 2021, and then again from June 7, 2021, to August 7, 2021. The Landlord's agent stated that this was done, in part, to accommodate the Tenant's request for more time, due to his medical issue. I accept that there may have been other reasons for the extension of the completion date. However, I also accept that it was, in part, extended as a result of accommodating the Tenant's request for more time, and because he had disputed the Notice and the parties were awaiting a hearing. This shows some consideration being given to the Tenant's situation.

Having reviewed the totality of the situation, I note that the Tenant feels the Landlord committed fraud and improperly evicted him. However, I do not find the Landlord's behaviour is sufficiently egregious, high handed, or negligent, such that it warrants aggravated damages.

I dismiss the Tenant's claim for aggravated damages.

Conclusion

I grant the Tenant a monetary order in the amount of \$18,000.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 28, 2023

Residential Tenancy Branch