



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 12, 2023 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation relating to a Two month Notice to End Tenancy for Landlord's Use.

The Tenants, the Landlord, and the Landlord's Agent attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the Tenants' Application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Landlord confirmed that they did not submit any evidence in response to the Application.

The parties were given an 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.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 51 and 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2017. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$650.00 which was due to the Landlord on the first day of each month. The tenancy ended on September 1, 2022 in compliance with the Two Month Notice dated June 28, 2022 (the "Two Month Notice"). The Tenants submitted a copy of a shelter form and a copy of the Two Month Notice in support.

The parties agreed that the Landlord served the Tenants with the Two Month Notice as the Landlord requires vacant possession of the rental unit as they intend to occupy the rental unit. The parties agreed that the Tenant vacated the rental unit on September 1, 2022 for this purpose.

The parties agreed the Landlord has been renovating the rental unit and has not yet began occupying the rental unit which is still undergoing renovations. The Landlord stated that the rental unit was dirty, damaged, and was therefore in need of repairs. Furthermore, the Landlord stated that they intend to occupy the rental unit long term, therefore, they decided to redo the kitchen, flooring, bathroom, and also the removal of an addition that was covering the porch as it was not up to code. The Landlord stated that no permits were necessary and that they are doing the work themselves when time allows.

The Tenants stated that the Landlord was meant to occupy the rental unit, however, it is apparent that the rental unit is still under construction. The Tenants provided a picture of the empty rental unit in support. The Tenants feel entitled to compensation equivalent to twelve times the amount of monthly rent as the Landlord did not accomplish the stated purpose of the Two Month Notice.

Analysis

The Tenants are claiming compensation in the amount of \$7,800.00 which represents twelve months of rent as the Landlord did not accomplish the intended purpose of the Two Month Notice.

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

The Residential Tenancy Policy Guideline 50 (the "Policy Guideline") further explains;

Reasonable Period A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken. 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.

I accept that the parties agreed that the Landlord served the Tenants with a Two Month Notice as the Landlord wishes to occupy the rental unit. I accept that the Tenants complied with the Two Month Notice and vacated the rental unit on September 1, 2022.

I accept that the Landlord has not yet occupied the rental unit as they are renovating the rental unit. I find that it is reasonable for the Landlord to conduct cosmetic renovations to the rental unit prior to them occupying it. I find that it is reasonable in the circumstance that the renovations have taken longer due to the fact that the Landlord is conducting the renovations on their own when time allows. I find that there is no evidence to demonstrate that the Landlord is acting in bad faith by re-renting the rental unit. I find that the Landlord is still required to occupy the rental unit for at least six months once the renovations are completed.

I therefore dismiss the Tenants' Application WITH leave to reapply should the Landlord not accomplish the stated purpose of the Two Month Notice after the renovations are completed.

Conclusion

The Tenants' Application is dismissed with leave to reapply.

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: June 1, 2023

Residential Tenancy Branch