



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's April 6, 2023, application to the Residential Tenancy Branch for:

- (i) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

- 1. Is the Tenant entitled to compensation in the amount of \$19,800.00?
- 2. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began September 15, 2017, and ended on December 31, 2022. Rent was \$1,650.00 due on the first day of the month.

The Tenant submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), which had an effective date of December 31, 2022. The reason stated for the Notice was:

- the rental unit will be occupied by the landlord or the landlord's close family member: father or mother of the landlord or landlord's spouse.

The Landlord affirmed that:

- the Landlord served the Notice on October 30, 2022, and the tenancy ended on December 31, 2022.
- the Landlord's mother (CT) moved into the rental unit on May 1, 2023, and continues to live there currently.
- CT only moved into the rental unit on May 1, 2023, because the Landlord realized there were substantial repairs that needed to be done on the rental unit.
- the Landlord had been travelling back and forth between his home in another part of BC and the rental unit to deal with the repairs.
- the repairs that needed to be done on the rental unit included:
 - large holes in the dry wall;
 - garbage left in all areas of the rental unit;
 - flooring black with dirt;
 - broken ceiling light fixtures;
 - shower doors torn off and replaced with a shower curtain;
 - broken dimmer switch;
 - doors kicked in;
 - holes in the doors;
 - claw marks on the doors;
 - dents in the heating vents;
 - holes in the sinks;
 - storage drawers black with dirt;
 - black burnout marks on concrete pads; and
 - removal of an ATV track, which had been cut by the Tenant at the front of the rental unit.
- the Landlord submitted as evidence affidavits from (i) CT; and (ii) a neighbour (JS) stating the following:
 - JS stated that the Landlord had told JS about the substantive damage done to the rental unit.
 - CT stated that the house was left in a very poor condition including kicked in doors, dirt and grime everywhere, broken light fixtures, and large holes in the dry wall.

- the Landlord did not submit any photographic evidence to show the amount of damage that was done to the rental unit.
- the Landlord did a move-out inspection with the Tenant on January 7, 2023. It was clear during the inspection that there was a significant amount of damage done to the rental unit. However, the Landlord did not realize the true extent of the damage until the Landlord returned to the rental unit later in January 2023 to do a more extensive check.
- the Landlord did not record any damage on the move-out condition inspection report and stated that everything was fine in the rental unit. This was because the Landlord wanted to end the tenancy as amicably as possible. The Landlord felt that the value of the damage done to the rental unit far outweighed the security deposit provided by the Tenant, which was why the Landlord decided to just return the security deposit rather than enter into a dispute with the Tenant.
- the last time the Landlord had inspected the rental unit was before 2022.
- the Landlord's daughter had brain surgery on February 14, 2023, which impacted the Landlord's ability to conduct repairs in the rental unit for a few weeks following the surgery. The Landlord found out about the surgery some time in November or December 2022 but was unable to provide the exact date.

The Tenant affirmed that:

- the Tenant did a move-out inspection with the Landlord on January 7, 2023. The Landlord had no complaints about the rental unit and the Tenant received the security deposit back in full on January 15, 2023.
- the Tenant had hired a cleaner to clean the rental unit prior to moving out. The cleaner was in the rental unit for 10 hours.

Analysis

Section 51(2) of the Act states that, if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if:

- 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
- the rental unit is not used for that stated purpose for at least six months' duration.

In addition, according to Policy Guideline 50, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 of the Act or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months.

Section 21 of the *Residential Tenancy Regulation* (the Regulation) further provides that, in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to show that steps have been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy. I find this because the Landlord did not record any damage on the move-out condition inspection report and stated that everything was fine in the relevant report.

The Landlord neither (i) submitted any photographic evidence to show the amount of damage that was done to the rental unit; nor (ii) called CT or JS, whose affidavit the Landlord is relying on to prove the amount of damage done to the rental unit, to provide testimony at the hearing. Accordingly, I do not find that the Landlord has a preponderance of evidence to contradict the move-out inspection report. As such, per section 21 of the Regulation, I find that the move-out report captured the true nature of the rental unit at the end of the tenancy.

Therefore, I find that substantive repairs were not required at the rental unit. Since substantive repairs were not required, I find that 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 since it took CT close to four months after the effective date of the Notice to move into the rental unit.

In relation to extenuating circumstances, the Landlord's evidence was that the Landlord's daughter had brain surgery on February 14, 2023, which impacted the Landlord's ability to conduct the repairs for a few weeks following the surgery. While it is not clear based on the evidence whether the Landlord knew about the Landlord's daughter's health issues before the Notice was issued, I find that even if the Landlord found out after the Notice was issued, it still does not excuse the Landlord. This is because, as mentioned above, I find that significant repairs were not required at the end of the tenancy.

Therefore, even if I accept that the Landlord was not able to tend to the rental unit for a month after the surgery, this still means the Landlord took close to three months to

prepare the rental unit for CT. I do not find that the Landlord needed three months to prepare the rental unit for CT due to my finding that substantive repairs were not required.

Based on the above, I find the Tenant is entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$19,800.00.

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The application is granted. The Tenant is awarded a monetary order in the amount of \$19,900.00.

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: July 19, 2023

Residential Tenancy Branch