



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenant's Application under sections 51 and 72 of the Residential Tenancy Act (the "Act") for:

- a monetary order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 the Act
- authorization to recover their filing fee

The Landlord filed a cross application under sections 67 and 72 of the Act requesting:

- a monetary order for unpaid rent
- compensation for damage caused by the tenant or their pets
- authorization to recover their filing fee

Issues to be Decided

1. Is the Tenant entitled to compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?
2. Is the Landlord entitled to unpaid rent?
3. Is the Landlord entitled to compensation for damage caused by the Tenant?
4. Is either party entitled to recover their filing fee?

Background

The tenancy began on May 1, 2015, with a monthly rent of \$1,200.00, due on first day of the month, with a security deposit in the amount of \$600.00. The parties agree that monthly rent at the end of tenancy was \$1,300.00.

The parties agree that the Landlord served the Tenant with a letter dated May 31, 2022, giving the Tenant 60 days notice to end the tenancy, by noon on July 31, 2022, due to the Landlord's use of the property.

On July 21, 2022, the Landlord texted to confirm the Tenant was planning to vacate the property by July 31, and the Tenant responded that they were. The Landlord stated they were scheduled to start renovating the rental unit on August 1, 2022. The Landlord requested to meet on July 31, 2022, and the Tenant suggested they meet on August 1, 2022.

On August 1, 2022, the parties met in person at the rental unit. The Tenant returned the keys. The Landlord returned the damage deposit plus \$200.00 extra, for a total of \$800.00. The parties signed an RTB Form 8 – Mutual Agreement to End Tenancy (the Mutual Agreement) at the Landlord's request, which stated the Tenant would vacate the premises that day.

The parties agree there was damage to the rental unit caused by rodents. The Landlord acknowledged that the occupants of the unit below the Tenant notified the Landlord of hearing rodents inside the walls as early as May 2022.

The Landlord decided not to move into the rental unit. The Landlord says the renovations were more involved and took longer than they had anticipated, and the commute to work from the rental unit was too long. The Landlord completed renovations to the unit and rented the unit to a new Tenant beginning sometime around December 2022.

Analysis

Is the Tenant entitled to compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

At the time of signing the Mutual Agreement, the Tenant believed the Landlord intended to renovate and move into the rental unit themselves. The Tenant says they considered the Mutual Agreement void or invalid because it listed August 1, 2022 as the vacate date rather than July 31, 2022. The Tenant believed that by August 1, 2022 the tenancy was already over and there was no tenancy to attach the Mutual Agreement to.

I do not accept the Tenant's arguments that the Mutual Agreement was invalid or unrelated to the tenancy in question. The Mutual Agreement names the correct address and parties to the original tenancy agreement. The Tenant signed without protest or complaint to the Landlord, while the form itself clearly indicates that neither party is obligated to sign it. In addition, the Tenant accepted \$200.00 compensation offered by the Landlord at the time of signing.

The Mutual Agreement includes a warning that “the tenancy will end with no further obligation between Landlord(s) or Tenant(s). If you are the Tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy.” Since it refers to previous notices to end tenancy, the Mutual Agreement may be used after a notice to end tenancy has been served. This is often after a date that one party has already stated as an end date to tenancy. The warning implies that the Mutual Agreement may replace a previous Notice to End Tenancy and any rights to compensation under a previous Notice.

Since the Tenant did not notify the Landlord of their belief that the agreement was invalid, and the Tenant accepted compensation at the time of signing, it would be reasonable for the Landlord to rely on the Mutual Agreement.

I find the tenancy was ended by Mutual Agreement on August 1, 2022.

Even if I did not uphold the Mutual Agreement, the Tenant’s right to compensation is contingent on service of the Two Month Notice to End Tenancy For Landlord’s Use of Property (the Two Month Notice). I find the Tenant was served with a letter that does not comply with section 52 of the Act. I find the letter did not describe what the “Landlord’s use” of the property would be. The letter did not state that the Landlord would occupy the unit, and both parties were aware of the Landlord’s intention to renovate the unit.

The Tenant says they are an experienced realtor. Although the Tenant says they relied on that letter as if it were a Two Month Notice, I find it unlikely they were unaware of the Landlord’s requirement to serve a proper Two Month Notice in compliance with the Act. It would be unfair to allow the Tenant to rely on the letter to end tenancy without allowing the Landlord to rely on the Mutual Agreement that followed.

I find the Tenant was not served with a Two Month Notice, and the Tenant is not entitled to compensation under a Two Month Notice.

Therefore, I dismiss the Tenant’s application for compensation under section 51 the Act, without leave to reapply.

Is the Landlord entitled to unpaid rent?

The Landlord requests compensation for five months rent from August 2022 to December 2022, while the Landlord renovated the rental unit. The Landlord says they initially intended the renovation would take one month and it took longer because of damage they believe was caused by the Tenant.

The Landlord is not entitled to unpaid rent after August 1, 2022, because the tenancy was ended by Mutual Agreement on that date.

I dismiss this portion of the Landlord's application without leave to reapply.

Is the Landlord entitled to compensation for damage caused by the Tenant?

Under section 67 of the Act, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord requests compensation for repairing and renovating the floors, walls, doors, and counters, and replacing appliances because of damage they believe was caused by the Tenant. The Landlord provided receipts for their renovation expenses, and photographs of the rental unit at the demolition stage of the renovation.

The Landlord did not provide any photographs of the rental unit at the beginning of the tenancy. The Landlord did not complete a move-in or move-out inspection or any inspections of the interior of the rental unit during the tenancy. The Landlord has not indicated how the Tenant is responsible for damages to any appliances.

The Landlord says they served multiple notices requesting the Tenant to clean up the property during the tenancy, in part to address issues with rodents. The Landlord says the Tenant should have reported the extent of the rodent infestation so that the Landlord could minimize the damages rodents caused to the unit.

The Tenant says rodents were an issue at the rental unit since before their tenancy began. The Tenant says rodent traps were in place outside at the start of the tenancy and the Tenant maintained the bait and poison. The Tenant says an area near the exterior door to the common laundry room was rotted, and the Tenant placed a large rock in the hole to block rodent access. The Tenant says they were not aware of the extent of damage inside the rental unit since it was hidden within the walls. The Tenant says the Landlord was aware of rodent issues and should have inspected the unit.

I find the rodent issue was ongoing and pre-existed the tenancy. The Landlord was aware of the issue given the outdoor traps and the multiple notices for the Tenant to clean up the exterior storage. The Landlord should have been aware of the exterior damage and potential ingress near the common laundry room. The Landlord acknowledged the downstairs Tenants complained of rodents in the walls as early as May 2022.

I note that the Landlord had intended to renovate the rental unit before they took over possession on August 1, 2022. During the renovations, although the parties continued to communicate by text message, the Landlord did not indicate any surprise or complaint to the Tenant about the state of the rental unit.

I find on a balance of probabilities the Landlord was aware of rodent issues, and they could have reasonably anticipated the extent of the damage.

For the above reasons, I dismiss this portion of the Landlord's application, without leave to reapply.

Is either party entitled to recover their filing fee?

As neither party was successful, I decline to award filing fees.

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

The Landlord's application is dismissed in its entirety without 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: August 16, 2023

Residential Tenancy Branch