Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing as was the Landlord and legal counsel for the Landlord (the "Landlord"). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant's evidence. The Tenant confirmed receipt of a copy of the Landlord's evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses during the hearing.

Preliminary Matters

The Tenant named two respondents as landlord on the Application for Dispute Resolution. At the hearing Landlord H.R. stated that the other party named was the listing agent for the sale of the rental unit and therefore was not an agent regarding the tenancy and was not a landlord. The Tenant disputed this and stated that the other party acted as an agent during the tenancy.

As the parties were not in agreement, I refer to the tenancy agreement submitted into evidence which names H.R. as the Landlord and D.H. as the Tenant. I also refer to the definition of landlord as stated in Section 1 of the *Act* as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this

While the Tenant argued that the other party named acted as an agent and therefore should be named, I fail to find sufficient evidence of this. Instead, I accept the testimony of the Landlord that the other party was a listing agent for the sale of the rental unit and accept the parties named on the tenancy agreement as the parties to this dispute. Upon consideration of the above definition of 'landlord', I do not find that the other named party meets the definition.

I also note that the notice to end tenancy submitted into evidence was signed by Landlord H.R. and not by any other parties. Therefore, in the absence of sufficient evidence to support the Tenant's testimony that the other party was either the landlord or an agent for the landlord, I am not satisfied that they should be named in this dispute.

Pursuant to Section 64(3)(c) of the *Act,* I amend the application to remove the second respondent from this dispute.

The Tenant applied for compensation in the amount of $46,080.00, although he noted the limit of $35,000.00. However, the parties were informed at the hearing that the Tenant's entire monetary claim would be considered given that the Tenant had applied

for 12 months of rent compensation in the amount of $41,760.00. As the provisions under the *Act* for 12 months of compensation do not stipulate a limit and instead are based on the monthly rent amount, I find that the Tenant is entitled to consideration for the full amount claimed and that the $35,000.00 limit does not apply should the 12 months compensation exceed that amount.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started in May 2014 and after one year a new tenancy agreement was signed beginning May 1, 2015. Monthly rent was $3,380.00 and the Tenant paid a security deposit at the start of the tenancy which has since been returned. The Tenant moved out on August 29, 2018.

The Tenant has applied for compensation in the amount of $46,080.00 which includes one month of rent, $840.00 for moving expenses, and 12 months of rent compensation. The Tenant calculated the monthly rent at $3,480.00 although during the hearing the parties agreed that rent was $3,380.00 as stated on the tenancy agreement and did not make any further submissions regarding the monthly rent amount.

The Tenant provided testimony that the Landlord had advised him in February or March 2018 that he had plans to sell the rental unit. The Tenant stated that once the rental unit was on the market the Tenant accommodated showings. A few months later, the Tenant noted that the Landlord told him that he wanted to complete renovations so as to better stage the rental unit for sale and therefore the Tenant needed to move out.

The Tenant noted that the previous year there was a flood in the rental unit due to a burst pipe which took considerable time to repair and as such, the Landlord was aware

of the Tenant's willingness to live through repairs/renovations. The Tenant also stated that the flooring was replaced during the repairs for the flooding.

The Tenant stated that he was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). A copy of this notice was submitted into evidence and shows a date of May 19, 2018. The reason for ending the tenancy as indicated on the Two Month Notice was for repairs or renovations that required the rental unit to be vacant.

The Tenant stated that as this was the incorrect notice, he advised the Landlord and was therefore served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"). A copy of the Four Month Notice was submitted into evidence dated May 30, 2018 and states the following as the reason for ending the tenancy:

- I am ending your tenancy because I am going to:
  - Perform renovations or repairs that are so extensive that the rental unit must be vacant

Further details of the work were provided on the Four Month Notice as follows:

1. *Add back the partition wall at the master bedroom to return the condo into two bedrooms*
2. *Renovate both bathrooms*
3. *New paint (walls and ceilings)*

The Tenant stated that he accepted the Four Month Notice at the time and did not dispute as the Landlord was within their rights to serve the notice. He stated his position that the Landlord had also indicated that the kitchen would be renovated, including removal of the cupboards and that the flooring would be replaced. However, he agreed that this was not written on the Four Month Notice.

In an email submitted into evidence by the Tenant dated May 24, 2018, the listing agent wrote that the renovations would include adding the wall back in to make the unit two bedrooms, but also to update the flooring and cabinets. It appears that the Two Month Notice was sent with this email.

The Tenant stated that the rental unit was in very good condition, but he accepted that the Landlord intended to do extensive renovations. However, he stated that after the tenancy had ended, he saw the rental unit for sale online and stated that he was surprised to see the bathrooms identical to how they were during the tenancy, as well as no changes to the kitchen or flooring.

The Tenant submitted some photos of the rental unit that he stated were taken from the online advertisements following the end of the tenancy. The Tenant stated that he was unable to find photos of the rental unit from before or during the tenancy. The Tenant also stated that he had two friends attend an open house and the friends confirmed that the unit looked mostly the same. He also stated that one friend asked the listing agent if renovations were done and was told that they were not other than adding a wall to make the rental unit two bedrooms.

The Tenant also questioned whether the Landlord actually had all of the required approvals and permits as indicated on the Four Month Notice. He also referenced the Two Month Notice which he stated also indicates that the Landlord had the required approvals and permits.

The Landlord submitted that they approached the Tenant in May 2018 to inform the Tenant that they were having financial issues and would need to sell the rental unit. The Landlord stated that the unit was put up for sale in May 2018 and that they received feedback that potential buyers could not envision the unit being two bedrooms. As such, the Landlord was told by the realtor to put the wall up to make the unit two bedrooms. They stated that they served the Tenant with the Two Month Notice before being informed that it was now the Four Month Notice that was needed which they then served instead.

The Landlord stated that the Tenant never indicated that he wanted to stay and instead accepted the Four Month Notice and made plans to move out. The Landlord also submitted that they never said that flooring would be replaced or that there would be any renovations to the kitchen. The Landlord also stated that they never indicated that they needed permits for the work.

Regarding the renovations completed, the Landlord testified that they installed the wall to make the unit two bedrooms and painted the entire rental unit. However, he agreed that he did not complete any major changes to the bathrooms and explained that it would have taken a long time to complete and due to financial issues, he wanted to sell

the rental unit sooner than that. As such, the Landlord stated that he had the wall installed, painted the entire rental unit and lowered the sale price of the rental unit.

The Landlord submitted that he completed the renovations exactly as he intended to do and that the Tenant did not dispute the notice when served. The Landlord also testified that the parties had a mutual agreement to end the tenancy and therefore that they did not even need to serve the Four Month Notice. The Landlord referenced a text message exchange between the parties starting in June 2018 and which were submitted into evidence. Although the copy of the text messages is not clear and therefore difficult to read, a text message from the Landlord in August 2018 states the following:

> *I trust that you have received my email and we are in agreement. Do you have a confirmed moving date?*

It is not clear whether the Tenant responded to this message.

The Landlord also stated that as he did not plan to do major renovations and did not need permits, he did not need to serve the Tenant with the Four Month Notice. In the Landlord's written submissions submitted into evidence, it is noted that the Landlord served the Four Month Notice to make the mutual agreement official and did not realize that the Four Month Notice did not need to be served.

The Tenant stated his position that there was no mutual agreement to move out and instead that the tenancy ended based on the Four Month Notice. He also noted that he moved out early on August 29, 2018 which was before the effective end of tenancy date as stated on the Four Month Notice as September 30, 2018.

The parties agreed that although the one month of rent compensation required after service of the Four Month Notice was not provided until recently, that it had been paid. Both parties submitted evidence showing that the Tenant received one month compensation as required after service of the Four Month Notice.

The Tenant has also claimed for an additional month of rent in the amount of $3,480.00 and $840.00 for moving costs, both of which he stated were promised to him due to moving out early. The Tenant submitted copies of emails into evidence which he stated establish that he is owed one additional month rent and moving costs.

In an email dated August 2, 2018 from the Landlord to the Tenant, the Landlord writes in part the following:

> *We still like to offer you the compensation for moving fee and addition free month rent above the free month that you are getting.*

In another email dated August 2, 2018 from the listing agent, the agent writes that they will personally cover the moving cost. Both emails seem to be sent in response to an email to the Landlord and listing agent dated August 1, 2018 in which the Tenant writes that he is trying to move out before August 15, 2018 and inquires as to the offer for the agent to pay the moving costs and for the Landlord to pay an additional month.

In another email from the listing agent dated July 11, 2018, the agent writes that he will personally take care of the moving costs.

The Tenant further testified that the Landlord and listing agent had advised him that the additional month of rent would be provided and that moving costs would be covered. The Tenant stated that they verbally agreed upon $600.00 for moving costs, but that he is now seeking the actual amount spent on moving which was $840.00.

The Landlord testified that the agreement to cover moving costs and pay an additional month of rent was if the Tenant moved out early by August 15, 2018. However, as the Tenant did not move out until the end of August 2018, the Landlord stated that the agreement was not effective. The Landlord referenced emails submitted in their evidence including the email from the Tenant in which he writes in part the following regarding moving out early:

> *I was thinking about looking again to try and get out before the 15th.*

The parties discussed settlement but were unable to reach an agreement.

Analysis

Upon consideration of the relevant testimony and evidence, I find the following:

The Tenant applied for 12 months compensation pursuant to Section 51(2) of the *Act* which states the following:

> (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.

Section 51(3) of the *Act* allows for a landlord to be excused from paying the compensation should it be found that there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose on the notice to end tenancy.

The parties were in agreement that first a Two Month Notice was served and then it was determined that the correct form was a Four Month Notice. Therefore, I do not find the Two Month Notice to be relevant in this decision as I find that it was withdrawn by the Landlord when they realized it was served in error and when a Four Month Notice was served instead.

Upon review of the Four Month Notice, I find that it was served pursuant to Section 49(6) of the *Act* in that the Landlord ended the tenancy to complete renovations or repairs. Therefore, the issue before me is whether or not the Landlord completed renovations or repairs in the manner as indicated on the Four Month Notice as the reason for ending the tenancy.

As stated on the Four Month Notice dated May 30, 2018, the Landlord intended to complete the following three items:

1. Add back the partition wall
2. Renovate both bathrooms
3. Painting

Although the Tenant testified as to a belief that the Landlord had plans to renovate the kitchen and replace the flooring, I do not find this stated on the Four Month Notice. While it may have been communicated regarding the Two Month Notice or otherwise discussed verbally, I do not find that this was the reason for ending the tenancy as stated on the Four Month Notice. Instead, I find that the Landlord only listed the three items as stated above.

While the Tenant submitted photos that he stated were taken from the real estate listing after the tenancy had ended, in the absence of photos of the rental unit at the start of the tenancy or during the tenancy it is difficult to rely on the photos to establish the renovations/work that was completed in the rental unit. However, the Landlord testified that he had the wall installed to make the one bedroom unit into two and that he had the entire rental unit painted. The Landlord agreed that while the entire rental unit was painted, no additional work was completed in the bathrooms. Therefore, in the absence of evidence to establish otherwise, I accept the Landlord's testimony regarding the renovations/work that was completed in the rental unit.

While the Landlord testified that the tenancy ended through a mutual agreement and that the Four Month Notice did not have to be served, I do not find this to be the case. I do not find that the text messages or emails submitted into evidence establish that the parties had a mutual agreement and instead I find that they were discussing the end of the tenancy due to the service of the notice. As stated in Section 44(1)(c) of the *Act,* a tenancy can end if the parties agree in writing. However, in the absence of a written document setting the terms of the ending of the tenancy, such as the date the tenancy would end, I do not find that a mutual agreement was in place. I also note that a verbal mutual agreement would not fit the definition of a mutual agreement under the *Act.*

I also find that the Tenant vacating the rental unit prior to the effective end of tenancy date of the Four Month Notice was within his rights under Section 50 of the *Act* and did not mean that the Four Month Notice was null and void.

The basis of the Tenant's testimony seemed to be that the Landlord completed minor repairs only, despite the Tenant's belief that there were extensive renovations occurring. However, as stated, I do not find sufficient evidence to confirm that the Tenant was led to believe that the renovations would be extensive. As stated on the Four Month Notice, it seems that the Landlord was completing very minor renovations such that they could be considered cosmetic only.

I also do not find an issue of permits to be relevant to the matter at hand. As stated in Section 49 of the *Act,* a tenant has 30 days to dispute a Four Month Notice which may include a disagreement regarding whether the rental unit needs to be vacant for the repairs/renovations to take place, or whether the landlord has the required permits. Therefore, an argument about whether the rental unit needed to be vacant or whether the required permits/approvals were obtained are not issues that I find to be relevant to a claim under Section 51 of the *Act* regarding whether the Landlord took reasonable steps to complete the stated purpose of ending the tenancy.

As the Tenant did not dispute the Four Month Notice, I find that he accepted the notice and cannot now dispute how minor the intended repairs were, whether permits were obtained, or whether the rental unit needed to be empty for the intended renovations to take place.

Upon review of the Four Month Notice, I also do not find that it included a lot of details of the renovation plans. This includes the information regarding renovating the bathrooms which did not include any details as to how extensive or minor these renovations would be and what the Landlord intended with renovating the bathrooms.

Instead, the issue is whether or not the Landlord completed the repairs as stated on the notice. Although the Landlord did not complete a full renovation of the bathrooms, as stated, I do not find that the notice was clear as to what renovations were to be completed in the bathrooms. Therefore, for all intents and purposes, I find that the Landlord substantially completed the renovations as intended by installing the wall between the bedrooms and painting the entire rental unit, including the bathrooms.

Therefore, I find that the Landlord completed the renovations as stated on the Four Month Notice as the reason for ending the tenancy. As stated, I do not find an application under Section 51 of the *Act* to be the process for disputing the legitimacy of the Four Month Notice. Instead, I find that the Landlord stated his intention to do minor renovations and completed minor renovations following the ending of the tenancy. The validity of the notice is no longer in question as the notice was accepted when the Tenant did not dispute the notice within the allowable timeframe and instead moved out.

Accordingly, I am not satisfied that the Tenant has established that he is entitled to 12 months compensation pursuant to Section 51(2) of the *Act.* The Tenant's claim is dismissed, without leave to reapply.

Regarding the one month rent and moving costs, the parties were not in agreement as to whether the Landlord was to provide this if the Tenant moved out by August 15, 2018 or if the agreement was to provide this compensation regardless.

Upon review of the emails submitted into evidence by both parties, I do not find that the Landlord stated that one additional month of rent compensation was only to be provided in the case that the Tenant moved out by August 15, 2018. Instead, I find that in an email dated August 2, 2018 the Landlord confirmed that an additional month of rent would be provided. I also find that the emails indicate that the Tenant was attempting to move out by August 15, 2018, but I do not find any confirmation that he would do so or that the agreement was dependent on this.

As I do not find that this was based on a certain move out date, I find that it was an agreement reached between the parties due to service of the Four Month Notice and therefore find that the Landlord owes the Tenant rent in the amount of $3,380.00. Although the Tenant applied for rent in the amount of $3,480.00, I do not find sufficient evidence to establish that rent was this amount instead of the $3,380.00 testified to by the parties and as stated on the tenancy agreement.

Regarding the moving costs, I find that the emails submitted into evidence indicate that the listing agent of the rental unit stated his intention to personally provide this to the Tenant. In an email dated August 2, 2018 the listing agent confirms this. I also note that the Landlord states in an email that “we” will cover the moving costs, seemingly implying that the Landlord and listing agent will, which is followed up shortly by an email from the listing agent confirming that the moving costs will personally be covered by them.

Therefore, I do not find sufficient evidence to be satisfied that the Landlord was to pay the moving costs. Instead, I find that this is not a matter between the Tenant and Landlord and instead would be between the Tenant and the listing agent; a matter which would be outside of the jurisdiction of the tenancy legislation.

As stated, I do not find sufficient evidence before me to establish that the listing agency fits the definition of a landlord under the *Act* such that they should be named on this dispute. Therefore, I dismiss the Tenant’s claim for moving costs without leave to reapply.

As the Tenant was partially successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee paid for the application in the amount of

$100.00. The Tenant is awarded a Monetary Order in the amount of $3,480.00 for one month of rent as well as the filing fee.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **$3,480.00** for one month of rent and the recovery of the filing fee. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the Tenant's claims are dismissed, 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: November 28, 2019

Residential Tenancy Branch