



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The tenant, the landlord and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with her application for dispute resolution via registered mail in January of 2020. I find that the landlord was served in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2016 and ended on September 2, 2019. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. The security deposit was returned to the tenant at the end of the tenancy. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The subject rental property is a house containing two ground floor suites, two second floor suites and one third floor suite. The subject rental property is one of the ground floor suites. The landlord resides in one of the second-floor suites.

The tenant testified that the landlord attended at the subject rental property on July 26, 2019 and informed her that he wanted to renovate the subject rental property and she would therefore have to move out. The tenant testified that the landlord asked her if she would like the notice to end tenancy in writing, the tenant responded in the affirmative.

The tenant entered into evidence the following text exchange:

- August 2, 2019: Tenant- "Hi [landlord], may I ask what type of renovations you are planning to do, and how long they will take?"
- August 5, 2019: Landlord- "Hi [tenant] I have the notes for you I can bring it down"
- August 5, 2019: Tenant- "Hi [landlord], sure anytime"
- August 5, 2019: Tenant- "Hi [landlord], are you planning to move into this unit? You told me las week that you will be renovating it, and also the suite on the top floor"
- August 5, 2019: Landlord- "I am planning to renovate the basement first and stay in it until I finish the top floor"

Both parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on August 5, 2019. The Two Month Notice is dated July 26, 2019.

The Two Month Notice states the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant testified that after speaking with the landlord she looked into her rights as a tenant and informed the landlord that he would need to give her a Four Month Notice to End Tenancy for Renovation, not the Two Month Notice she received.

The tenant testified that she texted the landlord on August 6, 2019. The text was entered into evidence and states:

Good morning [landlord]. I have looked int it and I believe you gave me the wrong eviction form. For renovations, it is supposed to be a 4 month notice. Also, you dated the form July 26 but did not give it to me until yesterday Aug 5. Although I will begin to look for a new place in October, with my PhD defence and possibly transitioning to a new job, I do need the official 4 month notice in writing please with the correct date, in case I am unable to find something right away. Thank you.

The tenant testified that the landlord did not respond to her August 6, 2019 text and did not provide her with a Four Month Notice to End Tenancy for Renovation or Repair.

The tenant testified that she gave the landlord notice to move out before the effective date of the notice, in accordance with section 50 of the *Act*, because the effective date was the same week she had to defend her PhD, and that would have been too stressful. The landlord did not dispute the above testimony.

The tenant testified that another tenant of the rental house told her in November of 2019 that the subject rental property was all torn up. The tenant testified that she attended at the subject rental property, and that a stop work notice from the City was posted to the door. The tenant entered into evidence a photograph of the notice dated October 30, 2019. The notice states in part:

Whereas a violation of
The [City] building by-law
The [City] electrical by-law
The [City] plumbing by-law

Has been found, it is hereby ordered in accordance with the above By-Law that all persons must STOP WORK IMMEDIATELY.

The stop work notice states the address of the subject rental property and notes that it is the ground floor suite.

The tenant testified that the City also posted a letter dated November 5, 2019 on the door of the subject rental property. The tenant took a photograph of that letter and entered it into evidence. The November 5, 2019 letter states in part:

On October 30, 2019 our inspection services reported that the following interior alterations are being carried out at the above-cited location, without permit and in contravention of [building by-law] and [electrical by-law]

Accordingly, a STOP WORK NOTICE (copy enclosed) has been posted at the site.

....you are ordered to stop work at this site immediately.

Therefore, you must either obtain the required permits for the above-noted work or obtain the required permits to remove all work carried out without permit, and restore the building to its last approved condition **within 30 days of the date of this order....**

The landlord's agent testified that his father, the landlord, is 81 years old and needs to move into the subject rental property because it is a ground floor suite and it is difficult for him to use the stairs to gain access to his suite on the second floor.

The landlord's agent testified that the renovations at the subject rental property are not extensive and that they did not actually need a permit, but someone must have called the city to complain about the work being done, which resulted in the stop work order and caused significant delays.

The landlord's agent testified that the landlord chose to obtain the required permit rather than dispute the need for permits with the City. The landlord entered into evidence a screen shot of the building permit issued to the landlord for "interior alterations to renovate the bathroom in this existing unit".

The landlord's agent testified that they only needed the permit for the bathroom renovation. The landlord's agent testified that the landlord has the right to renovate the bathroom before he moves into the subject rental property. The landlord's agent testified that the landlord has not yet moved into the subject rental property but hopes to in the next two weeks.

Analysis

Section 49(2) to section 49(6) of the *Act* states:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a)demolish the rental unit;

(b)renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c)convert the residential property to strata lots under the [Strata Property Act](#);

(d)convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);

(e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f)convert the rental unit to a non-residential use.

Section 51(2) and section 51(3) of the *Act* state:

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.

Residential Tenancy Policy Guideline #50 states:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

The landlord's agent testified that the landlord has the right to renovate the subject rental property before he moves into it. I find, pursuant to Residential Tenancy Policy Guideline #50, that the landlord did not have the right to renovate the subject rental property before moving into it.

Based on the testimony of both parties, I find that the landlord evicted the tenant so that he could renovate the unit before moving into it. I find that the landlord did not move into the subject rental property in accordance with the Two Month Notice and that nearly 10 months later, the landlord has still not moved into the subject rental property. I find that the landlord did not take steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, contrary to section 51(2)(a) of the Act.

Residential Tenancy Policy Guideline #50 states:

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 find that the landlord's circumstances are not extenuating circumstances as set out in section 51(3) of the *Act* and Residential Tenancy Policy Guideline #50. I find that the landlord's intent was to renovate the subject rental property and then move into it. I find that the landlord should have served the tenant with a Fourth Month Notice to End Tenancy for Renovation, not the Two Month Notice. I find that the landlord did not have the necessary permits required to complete the renovations before the Notice to End Tenancy was served on the tenant. I find that the landlord breached the *Act* by serving the wrong notice and not having the appropriate permits in place at the time the notice was served.

Based on my above findings, I find that, pursuant to section 51(2)(a), the tenant is entitled to recover 12 months' rent from the landlord in the amount of \$13, 200.00.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$13, 200.00.

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 landlord 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.

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 09, 2020

Residential Tenancy Branch