Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT, MNDC, MNRDC, FFL

Introduction

In the first application the tenant seeks a monetary award for the twelve months rent equivalent penalty imposed by s. 51 of the *Residential Tenancy Act* (the "*RTA*"). That penalty is imposed in the event a landlord ends a tenancy by a two month notice to end the tenancy "for landlord use of property" but 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.

In the second application the landlord seeks a monetary award to recover alleged unpaid rent from September 2019 and the amount paid to a contractor who renovated the rental unit after the tenant left.

At hearing it was agreed that the tenant had paid the September 2019 rent and that claim was withdrawn by the landlord.

Both parties attended the hearing, the landlord by her legal counsel, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed to carry out the stated purpose in the Notice? If so, are there extenuating circumstances that excuse the failure?

Has the tenant failed to return the premises in a reasonably clean condition and free of damage but for reasonable wear and tear?

Background and Evidence

The rental unit is a one bedroom apartment, one of four located on the second floor above a commercial building. The tenant moved in in the year 2005 under a former landlord who sold the property either to this landlord or to a company she is involved in in July 2018. The last rent was $580.00 per month. The landlord does not hold any deposit money.

The tenancy ended October 30, 2019 pursuant to a two month Notice to End Tenancy for landlord use of property dated July 4, 2019 with an effective date of October 30, 2019. The Notice was in form 32 of the Residential Tenancy Branch. It indicated that the landlord TL was ending the tenancy because the rental unit would be occupied by the landlord or a close family member of the landlord. That is a lawful ground for landlord to end a tenancy under s. 49 of the *RTA*.

The tenant vacated by October 30. The landlord had attempted to view the rental unit in early September but had to cancel for health reasons. There was no move-out inspection nor did the landlord give the tenant the two opportunities for inspection as set out in s. 35 of the *RTA*.

The landlord submitted an affidavit exhibiting photos of the rental unit after the tenant moved out. They showed that the tenant had not cleaned the rental unit before leaving and, indeed, had not generally cleaned it for a very long time. There was observable grime around a light switch. Counters appeared very scarred. Walls showed shadows where pictures had been. There was evidence of mould or mildew in places. Some of it was along the tops of baseboard. Elsewhere the mould/mildew appeared at locations where the wall was attached to the wooden framing behind (an indicator of moisture ingress from outside the wall). The tub and sink were stained orange by sulfur-rich water. There were various articles lying around; a couch and chairs, some articles in the kitchen cupboard, a portable air-conditioner in a window, a dresser and small desk, some loose carpeting, an antique phone.

The landlord hired a contractor who, for $14,620.40, renovated the suite, replacing the fridge, stove, tile, baseboard, kitchen sink, door stops, curtain rods, vinyl flooring lights and bulbs. The contractor also painted the suite.

It is the landlord's undisputed affidavit evidence that she had intended her nephew to move in when she gave her tenant the two month Notice. Her nephew would be attending school nearby that fall. However, her plan was delayed about three months

because of the condition of the rental unit and the need to renovated it. By the time the work was done her nephew had found other accommodation and did not need the suite so the landlord re-rented it, starting in February 2020.

The tenant saw the rental advertisement on social media, concluded the landlord was not in compliance with s. 51 of the *RTA* and brought his application in February.

Analysis

The Tenant's Claim for the Equivalent of Twelve Months' Rent

Section 51(2) of the *RTA* provides:

> (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
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> > (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.

Subsection (3) provides:

> (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.

Subsections 2(b) and 3(b) are the operative provisions in this case.

The “stated purpose” for the Notice in this case was to permit the rental unit to be occupied by the landlord or a close family member of the landlord. “Close family member” is defined in s. 49(1) of the *RTA* as the individual's parent, spouse or child, or the parent or child of that individual's spouse. A similar definition is contained in the form 32, “Two Month Notice to End Tenancy” used by the landlord in this case.

Counsel for the landlord argues that the landlord’s nephew was a close family member within this definition because he was like a son to her. They were very close. She notes that the *RTA* is an old statute and not in keeping with the modern concept of who might be a close family member. The landlord is from a culture, she says, where relations of this kind, the son of the landlord’s brother, are part of a large, collective family.

Despite the very able submissions of counsel for the landlord, I find that the definition of “close family member” in s. 49(1) of the *RTA* to be clear and unambiguous. A landlord’s nephew is not a landlord’s child.

Counsel points out that the tenant did not dispute the Notice within the time allowed. That is true. As a result, by operation of s. 49(9) of the *RTA* he was conclusively deemed to have accepted the ending of his tenancy. However, he has not given up his right to claim under s. 51. To determine otherwise would be to render that section virtually meaningless.

I do not think ss. 51(3)(b), above, can be of assistance to the landlord. Whether or not extenuating circumstances prevented the landlord from having her nephew occupy the rental unit for at least six months within a reasonable period of time after October 30, the nephew’s occupation of the rental unit was not the stated purpose in the Notice. The stated purpose was to have the landlord or a close family member occupy it.

In result I find that the landlord has run afoul of s. 51(2) of the *RTA* and cannot be saved by s. 51(3). The tenant is entitled to a monetary award in an amount equivalent to twelve months’ rent; the amount of $6960.00.

The Landlord's Claim for Cleaning and Repair

The landlord's claim is for compensation for damage to the rental unit. The particulars of her claim stated that she seeks an award for damages and cleaning costs. I treat her claim as one for compensation for damage and for cleaning.

The landlord's pictures show that at the end of this tenancy the tenant failed to leave the premises reasonably clean, as he is required to do by s. 37(2) of the *RTA*. At the same time the landlord produces no evidence about expending any of her own effort or paying anyone to clean the rental unit. Rather, as is apparent from the contractor's invoice, she conducted a major renovation of the rental unit.

I think it most likely that any area of the rental unit that might have required cleaning was simply torn out, replaced or covered over as part of the renovation and that the landlord has suffered no particular expense for cleaning.

The pictures show various items of furniture left by the tenant. The tenant testified that most all of the items he left were there when he moved in. The lack of evidence about what the tenant should or should not have removed prevents any reasonable determination of the question of whether the tenant was obliged to remove any of the items..

It is not apparent either what particular damage is being alleged to have occurred during this tenancy or what, if any, of the items the contractor purchased, like the fridge or the stove, were "damaged."

The landlord points to a statement from the previous owner that: "As I recall we had put in some new carpet, vinyl flooring, painted and new windows. I don't recall there being any deficiencies."

The tenant's undisputed testimony is that these improvements happened sometime prior to his tenancy, which started in 2005, making them at least 14 to 15 years old. The items mentioned as "materials" in the contractor's invoice are; fridge, stove, tiles, grout, glue, trim and baseboard, kitchen sink and faucet, door stops, plaint, shower and curtain rods, vinyl flooring, lights and bulbs."

Most all of these items have a useful life. Residential Tenancy Guideline 40: "Useful Life of Building Elements" indicates the following expected life spans for most of these

elements. They are: carpets and tile – 10 years, fridge and stove – 15 years, interior paint – 4 years, tubs, toilets and sinks – 20 years, light fixtures – 15 years.

Most all of the renovation was of items of the rental unit that had depreciated in value down to nothing or almost nothing.

One of the landlord's photos appears to show an electrical box without a cover. This item was not explained at the hearing and so I decline to assume it was an alteration made by the tenant or that it resulted in any particular expense to the landlord over and above the renovation she was conducting.

The contractor's bill include a charge of $40.90 for "Garbage Disposal." It is far from clear that this charge was not simply the dump fee for the construction waste, old fixtures and appliances the contractor removed as a part of the renovation.

In all these circumstances I find that the landlord has failed to establish that she has suffered any compensable monetary loss from the actions or neglect of this tenant. I dismiss her claim.

Conclusion

The tenant is entitled to an award of $6960.00 plus recovery of the $100.00 filing fee.

The landlord's claim is dismissed.

The tenant will have a monetary order against the landlord in the amount of $7060.00.

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: October 05, 2020

Residential Tenancy Branch