



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALDRIDGE CUSTOME HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNETC

Introduction

This hearing dealt with the Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord represented by three Agents and an Attorney (the “Landlord”), and both of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on July 2, 2017, as a one-year fix term, that rolled into a month-to-month at the end of the initial term of the tenancy. Rent in the amount of \$850.00 was to be paid by the first day of each month, and the Tenants paid the Landlord a \$425.00 security deposit at the beginning of the tenancy.

The Tenants testified that they received a Four-Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit on July 3, 2020. The notice indicated an effective end of tenancy date of November 9, 2019. A copy of this notice was submitted into evidence by the Tenants. The reason checked off by the Landlord within the Notice was as follows:

- *Perform renovations or repairs that are so extensive that the rental unit must be vacant.*
 - *Details of Work*
 - *Replace the full roof of this unit*

The Tenants testified that they secured a new rental unit quickly and issued a 10-day notice to the Landlord that ended their tenancy as August 10, 2019, in accordance with the *Act*.

The Tenants testified that they gave notice to the Landlord that they would be exercising their right of first refusal, pursuant to section 51.2 of the *Act*.

The Tenants testified that since the tenancy ended, they have not been given notice of the availability date of the rental unit.

The Tenants' also testified that the Landlord had not replaced the roof of the rental unit, as stated on the Notice to end tenancy, but that they had just completed patch repair work to the roof of the rental unit. The Tenants submitted eight pages of pictures, dated December 27, 2019, into documentary evidence.

The Tenants claim that the Landlord gave the Notice in bad faith, as the repairs that were completed did not require the rental unit to be vacant, and that they did not offer them the rental unit back once the repairs were complete.

The Landlord testified that they had originally planned to replace the roof but that when the roof repairperson attended the rental unit, they were advised that the roof could be repaired, instead of having to be replaced.

The Landlord presented a roof repair person to testify; the roof repair person testified that they completed the repair work in one and a half days and that due to the heat created during the repair work, no one should be in the rental unit during the repair work.

The Landlord testified that sometime in late August 2019, they had pumped into the Tenants at the local grocery store and had verbally offered them the rental unit back. The Landlord also testified that on August 31, 2019, their property manager had personally served a letter to the Tenants offering the rental unit back. The Landlord submitted a copy of the letter into documentary evidence.

The Tenants testified that they had never seen this letter before these proceedings and that they had not been offered the rental unit back as required.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord served a Four-month Notice to end Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit to the Tenants on July 2, 2019. Section 49 states the following:

Landlord's notice: landlord's use of property

49 (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.*

I have reviewed the Notice to end the tenancy, and I find that the Landlord issued this Notice pursuant to sanction 49(6b) of the Act, as they wrote on this notice that they intend to replace the roof of the rental unit.

I accept the agreed-upon testimony of these parties that the Tenants, exercised their rights pursuant to section 51(1a) of the Act, notifying the Landlord that wish to move back into the rental unit once repairs were completed, and they moved out of the rental unit on August 10, 2019, in accordance with the Act.

In this case, the Tenants are seeking compensation pursuant to sections and 51(2) and 51.3 of the Act. I will address each section separately; 51 (2) states the following:

Tenant's compensation: section 49 notice

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.*

I accept the testimony of the Landlord supported by the documentary evidence submitted by the Tenants that the Landlord did, in fact, conduct a patch repair to the roof of the rental unit and that they did not replace the roof of the rental unit as they had stated on the four-month notice.

After reviewing the testimony of the Landlord, the Landlord's witness and the picture evidence provided by the Tenants, I find that, on a balance of probabilities, this tenancy did not need to end in order to affect the patch repair of the roof of the rental unit, and that this notice had not been issued in good faith by this Landlord.

Section 51(2) of the *Act* sets out the consequences for a Landlord's breach, stating the following:

Tenant's compensation: section 49 notice

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.

Consequently, I find that due to the Landlord's breach of section 49(6), the Tenants are entitled to compensation pursuant to section 51(2) of the *Act*.

Additionally, I accept the agreed-upon testimony of these parties that the Tenants had given notice to the Landlord that they would be exercising their right of first refusal for this rental unit. Section 51.2 states the following:

Right of first refusal

51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

(2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant

(a) a notice of the availability date of the rental unit, and

(b) a tenancy agreement to commence effective on that availability date.

(3) If the tenant, on or before the availability date, does not enter into a tenancy agreement in respect of the rental unit that has undergone the

renovations or repairs, the tenant has no further rights in respect of the rental unit.

(4) A notice under subsection (1) or (2) must be in the approved form.

Section 51.2 requires that a landlord who has issued a four-month notice to end tenancy, and who has been notified by the tenant that they intend to exercise their right of first refusal must issue the tenant a 45-day notice of availability, on the approved form, which in this case would have been form #RTB-35 “45 Day Notice of Availability.”

I have reviewed the letter that the Landlord claims was issued to the Tenants on August 31, 2019, and I find that the Landlord did not use the approved form. I acknowledge that the service of this form is in dispute between these parties; however, I find that to be a moot point as the Landlord did not use the required form, and is not claiming that #RTB-35 was ever served on these Tenants. Therefore, I find that the Landlord is in breach of section 51.2 as they did not provide the tenants with the required 45-day notice period, nor did they use the required form for notice of availability.

Section 51.3(1) of the *Act* sets out the consequences for a Landlord’s breach of section 51.2, stating the following:

Tenant's compensation: no right of first refusal

51.3 (1) Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2).

Consequently, I find that due to the Landlord’s breach of section 51.2 the Tenants are entitled to the compensation set out in section 51.3 of the *Act*.

For the reasons stated above, I grant the Tenants a monetary order in the amount of \$10,200.00, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement in compensation due to the Landlord's breaches of the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the **\$100.00** filing fee paid for this application.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$10,300.00. The Tenants are 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: March 2, 2021

Residential Tenancy Branch