



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant MW (the tenant) and the landlord's representative PM (the landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that the Act was amended on July 01, 2021. All the sections of the Act mentioned in this decision are the ones in effect until June 30, 2021, as the points at issue are related to facts that happened before July 01, 2021.

Preliminary Issue – Application for compensation under section 51(2)

The tenant's application states:

01 - I want compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property

Amount requested: \$20,342.00

Description: Landlord stated on eviction notice that reason for eviction was Perform renovations or repairs that are so extensive that the rental unit must be vacant. Landlord stated that the foundations and lead in crawl space needed to be fixed. Needed to change the roof and drywall since house has a mold issue. Need to fix the water leak in crawl space. Reinforce the foundation as there is a leak and it is dangerous to structure of house. No evidence of new roof or foundation repairs but new tenants.

The tenant affirmed she is seeking compensation under section 51(2) of the Act in the amount of \$12,000.00 and compensation for moving costs.

The landlord stated he understands the tenant is seeking compensation under section 51(2) of the Act because she is paying a higher rent now.

The tenant did not submit documents or state in the application that she is seeking compensation for moving costs. I find the tenant did not indicate she is seeking compensation for moving costs.

Per section 62(2) of the Act, I accept the tenant's application for compensation under section 51(2) of the Act in the amount of \$12,000.00.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order under section 51(2) of the Act?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant affirmed the tenancy started on June 01, 2009 and ended on March 09, 2021. Monthly rent of \$1,000.00 was due on the last day of the prior month. The landlord collected and returned the security deposit of \$720.00. The landlord stated he purchased the rental unit on December 04, 2020 and he is not aware of the tenancy details.

Both parties agreed the landlord served and the tenant received the four month notice to end tenancy (the Notice) in person on December 13, 2020.

A copy of the December 13, 2020 Notice was submitted into evidence. It states the landlord will perform renovation or repair that are so extensive that the rental unit must be vacant. The Notice indicates:

Planned work:

Fix the foundation ad leak in crawl space. Need to change the roof and drywal since house has a mold issue. Need to fix the water leak in crawl space. Reinforce the foundation as there is a leak and it is dangerous to structure of house. Flooring and plumbing fixtures.

Details of work (if you are ending the tenancy for renovations or repairs, explain why the renovations or repairs require the rental unit to be vacant)

I have just bought this house as is there is lot of work need to be done. It will cause more problem to the structure of house if the water issue in crawl space is not fixed. Need to remove flooring and drywall also as there is mold and will keep on increasing if no further steps taken.

No permits and approvals are required by law to do this work.

(emphasis added)

The landlord testified the 1,200 square feet rental unit was built in 1949, it did not have a major renovation and it was in poor condition. The sale contract states: "Tenant has occupied the house for a long time. Sold as is. The seller will address the mould problem in the closet and the leaky crawl space."

The tenant said the rental unit was renovated in the summers of 2019 and 2020 (when the main bathroom was upgraded, new flooring and new fixtures were installed) and in October 2020 (when the closet and the drywall were upgraded) and that the house was liveable condition when the tenancy ended.

The landlord affirmed that the renovation was concluded in one or two weeks and the contractors worked slowly. Later the landlord stated the renovation was concluded in two weeks and that he did not know how many weeks he would need to complete the renovation.

The landlord submitted an invoice dated April 01, 2021 in the amount of \$14,700.00 for all the renovation work completed: concrete foundation reinforcement, bedroom drywall repair, patch work for roof leak, mould removal, lighting fixture, painting, laminate flooring supply, doors repair and plumbing fixture.

The tenant testified the renovation done after she moved out was minor and that she could have lived in the rental unit during the renovation.

The landlord said the April 2021 renovation was a major renovation, and necessary to prolong the use of the rental unit, as stated in the sale contract.

The landlord re-rented the unit on April 23, 2021 for \$2,100.00.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(6)(b) of the Act states:

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:

[...]

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

I accept that the Notice was served because the landlord planned to perform renovation or repair that are so extensive that the rental unit must be vacant, per section 49(6)(b) of the Act, as in effect by June 30, 2021.

I note the tenant could have disputed the Notice, but she moved out of the unit.

Section 51(2) of the Act provides that the landlord must pay an amount that is 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.

Residential Tenancy Branch Policy Guideline 50 (issued in October 2018) states:

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

☐ taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy,
[...]

A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy.

The only issue I must consider is if the landlord performed the renovations mentioned in the Notice, as the tenant did not dispute the Notice.

Based on the landlord's convincing testimony and the April 01, 2021 invoice, I find the landlord performed the renovations mentioned in the Notice.

Thus, I find the tenant failed to prove, on a balance of probabilities, that the landlord did not take steps to accomplish the stated purpose for ending the tenancy. The tenant is not entitled to compensation under section 51(2)(a) of the Act.

Conclusion

I dismiss the tenant's claim without leave to reapply.

As the tenant was not successful, the tenant is not entitled to the return of the filing fee.

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: January 14, 2022

Residential Tenancy Branch