Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

The former Tenant (hereinafter, the "Tenant") filed an Application for Dispute Resolution on January 14, 2022 seeking compensation from the Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 18, 2022. Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset, each party confirmed they received the prepared evidence from the other; on this basis the hearing proceeded.

Preliminary Matters – the Tenant's Application

On their Application, the Tenant described the Landlord's ending of the tenancy as completed "in bad faith". They claim 12 times the monthly rent under s. 51(2) of the *Act*. Additionally, they added "loss of quiet enjoyment for excessive harassment."

The Tenant provided the amount of $8,928.60 on their Application. They provided a document with their Application titled "Monetary Order Worksheet", with this amount completed. There is no calculation of this amount on the worksheet; however, in the hearing the Tenant clarified that the rent amount they paid at the end of the tenancy was $744.05.

Because the Tenant did not provide an amount claimed for their alleged "loss of quiet enjoyment for excessive harassment" I make no consideration of that issue in terms of compensation to the Tenant. This is because s. 59(2)(b) of the *Act* specifies that an

application must “include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.” Without a specified amount in question, I find the Tenant was not particular on this part of their claim for compensation.

The Tenant’s Application is only specific with respect to the Landlord ending the tenancy with a Four-Month Notice for Demolition, Renovation, Repair or Conversion of a Rental Unit (the “Four-Month Notice”). I make full consideration of that issue, as presented by the Tenant, in the decision below.

Issue to be Decided

Is the Tenant entitled to monetary compensation for the Four-Month Notice, pursuant to s. 51 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement. In the hearing, the Tenant clarified that they moved into the rental unit in approximately June 2012. At the start of the tenancy, the rent was $700 and over the course of the tenancy the monthly rent increased to $744.05. The Landlord confirmed these basic terms of the tenancy.

The Landlord issued the Four-Month Notice on September 24, 2020, providing the end-of-tenancy date as January 31, 2021. The Landlord indicated they wished to “perform renovations that are so extensive that the rental unit must be vacant” and they would “convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.” On that document, they indicated they had obtained the necessary permit, issued on September 23, 2020. The Landlord also provided details on the document setting out the work involved.

On their Application, the Tenant specified that the tenancy ended on May 8, 2021. In the hearing, the Landlord specified that the tenancy ended because of the Four-Month Notice that they issued in order to bring the rental unit “up to code.” The Landlord stated that the parties reached an agreement to end the tenancy. There was an arrangement involving the pro-rated rent for that final month of May 2021 when the Landlord returned the remainder of the rent – 23 days’ amount totalling $552 – to the Tenant, along with the two deposits the Tenant paid at the start of the tenancy.

In their evidence, the Tenant included a previous Application for Dispute Resolution that they signed on June 18, 2021. They had applied for the same amount of compensation, *i.e.*, 12 times the monthly rent. In that document, they noted "The home is already rented back out in under a month to a family."

The Landlord noted the previous settlement decision between the parties, reached through a dispute resolution process and finalized on January 11, 2021. This was the result of the Tenant's Application challenging the validity of the Four-Month Notice. As it appears in the Landlord's evidence, that settlement decision from the previous Arbitrator notes:

- The tenancy will end by June 1, 2021 when the Tenant would vacate
- The tenancy was ending pursuant to the Four-Month Notice – the decision specifically notes the Landlord affirmed they understood the 12-month rent amount penalty should they not fulfill "the above 2 reasons on the 4 Month Notice"
- The Tenant was not required to pay rent from January to May 2021.

In the hearing, the Landlord noted that they moved a caretaker into the property, and this was part of the agreement, *i.e.*, as part of the settlement, both parties agreed on <u>both</u> reasons indicated on the Four-Month Notice. Once the Landlord completed "major work" in the rental unit after starting on May 10, the caretaker moved into the rental unit on June 6, 2021. The Landlord specified the caretaker was "not a tenant".

In the hearing, the Tenant drew attention to the photos they provided in their evidence described as "new tenants." They also stated the rental unit was specified to be necessarily vacant on the Four-Month Notice. They also submitted the Landlord then had a 3rd set of tenants living in the rental unit, as shown in their evidence, showing new tenants after the caretaker so named by the Landlord move out in August/September 2021.

The Tenant's advocate also pointed to a message directly to them from the Landlord on November 12, 2020 wherein the Landlord stated, "I have been trying to work with [the Tenant] to move into my property." And "I simply want to renovate the unit and move into it." Additionally, they pointed out that the Landlord did not provide photos to show work completed, or caretaker belongings' with "no tools and stuff".

In response to this evidence and testimony from the Tenant, the Landlord stated the rental unit is part of a duplex home, and other tenants moved into the other part of that

rental unit property (*i.e.*, not the rental unit itself) in time. They also clarified that it was the caretaker who moved into the rental unit, along with their own family, and that caretaker was there for at least a year. This caretaker was the party responsible for basic maintenance of the rental unit, and the Landlord paid that person $700 per month. As proof they completed necessary work in line with the reasons provided on the Two-Month Notice, the Landlord pointed to the photos in their evidence dated July 2022.

Analysis

Under s. 49(6) of the *Act* a landlord may end a tenancy if they intend in good faith to convert the property for use by a caretaker, along with renovations requiring vacancy. The Landlord here issued the Two-Month Notice on September 24, 2020 for this reason, as well as renovations that require extensive renovations/repairs requiring vacancy.

The Tenant challenged the validity of that Four-Month Notice and that was the proper opportunity to address the question of the Landlord's good faith in ending the tenancy for that reason. That challenge by the Tenant resulted in a settlement with specific terms that the Tenant did not contest here, or otherwise present and not fulfilled by the Landlord.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

(2) Subject to subsection (3), the landlord . . . must pay the tenant . . .an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord . . . does not establish that
    (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
    (b) the rental unit . . . has been 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 . . . from paying . . .if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
    (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
    (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.

In this matter, the onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

On my review of the present matter, I find the Landlord accomplished the stated purpose for ending the tenancy. I find the evidence shows they used the rental unit for the reason indicated, for at least 6 months' duration. Specifically, that was extensive renovations, followed by a caretaker who moved into former rental unit.

The Landlord showed completion of the renovations in their evidence, with pictures showing the completed state after renovations, dated July 2022. There was additional evidence in the form of invoices and electrical permits. In their testimony they provided evidence that a caretaker lived there, with the Landlord paying that caretaker $700 per month. The Tenant presented the Landlord did not provide ample evidence of the former rental unit now being that of a caretaker's abode; however, I don't know specifically what the Landlord here would present in order to show that. On this singular point, the Landlord's testimony provides ample weight over the evidence and opinion of the Tenant.

I find the Landlord also was aware of the conditions of the previous settlement decision of January 11, 2021. That Arbitrator specified that both reasons for ending the tenancy, as indicated on the Four-Month Notice, must be fulfilled. I find the Landlord accomplished that here; therefore, I find s. 51(2)(a) and (b) were fulfilled and the Tenant has not claim.

For this reason, the purpose for ending the tenancy was accomplished right away; moreover, the Landlord has used the rental unit for that purpose for at least 6 months' duration.

The Tenant did not present ample evidence in a clear manner to show otherwise. I find the Tenant's account is at best speculative in attempting to show the Landlord either re-rented the rental unit or attempted a sale. I find the Landlord has offset the burden of proof to show there was no violation of the *Act*. For this reason, there is no compensation to the Tenant under the *Act* s. 51.

I find the evidence clearly shows the Landlord continued occupancy of the rental unit. With this reason, I find the Landlord has offset the burden of proof to show there was no violation of the *Act*. For this reason, there is no compensation to the Tenant under the *Act* s. 51.

Conclusion

For the reasons outlined above, I dismiss the Tenant's claim for monetary compensation, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 29, 2022

Residential Tenancy Branch