Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

E.C. appeared as the Applicant and was joined by her father, R.C., who assisted her in her submissions. H.U. and B.U. appeared as the Respondents.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Applicant entitled to compensation under s. 51(2) of the *Act* equivalent to 12 times the monthly rent payable under the tenancy agreement?
2) Is the Applicant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Applicant confirmed the following aspects with respect to the tenancy:

- She took occupancy of the rental unit on February 15, 2017.
- Vacant possession was given to the Respondents on May 31, 2021.
- Rent of $975.00 was due on the 15th day of each month.

The Respondents advise that they purchased the property immediately prior to the Applicant vacating such that they were unable to confirm the relevant aspects of the tenancy. The Applicant has provided a copy of the tenancy agreement in her evidence.

The subject rental unit is a lower suite in a single detached home.

The Applicant testified that on March 31, 2021 she received a Two-Month Notice to End Tenancy, signed on the same date, which set an effective date of May 31, 2021. I have not been given a copy of the Two-Month Notice, though the Applicant confirms that it was in the standard form RTB-32 and was signed by her former landlord. The Applicant's evidence does, however, include a copy of the buyers' notice for vacant possession, which was signed by the Respondents on March 31, 2021.

The Respondents testified that they took possession of the property on April 29, 2021 and believe the present application is the result of a misunderstanding with the Applicant, who may have understood that their extended family would be occupying the space. The Respondents advise that they took possession of the basement and have made use of the space as their own after the Applicant vacated. I am advised by the Respondents that the rental unit was separated from the upper portion of the house when a wall was put up in a doorway on the stairwell connecting both spaces. The Respondents indicate that the wall was taken down and the rental suite decommissioned. The Respondents further advise that before the wall was taken down, they were entering the lower suite through the outside entrance and had begun to make use of the space prior to the wall being opened up.

The Respondents evidence includes photographs that are timestamped. Two photographs dated June 18, 2021 show a hole cut through drywall at the bottom landing

of a stairwell. The Respondents evidence also includes an email dated January 4, 2022 from a building inspector with the local municipality confirming the rental unit had been decommissioned.

The Respondents further indicate that they have continued to make use of the space for themselves ever since and have not re-rented it, testifying that the former bedroom for the rental unit is now used as an office as they work from home. Photographs from the Respondents show the space with various furnishings, including a ping pong table and office furniture. The Respondent B.U. advises that he and his partner enjoy playing ping pong.

R.C., on behalf of the Applicant, argued that the Respondents have breached the spirit and tenor of the *Act* and that they did not occupy the space but have instead decommissioned it by conducting renovations. It was argued by R.C. that occupation within the context means occupation of the rental unit in kind, rather than its conversion into a single family home. R.C. advised that the Applicant had undergone hardship in finding a new place and that he and the Applicant had to purchase a place for her to live and incurred significant debt in the process. R.C. further argued that it is improper for the Respondents to have decommissioned a rental suite given the overall rental stock availability within the community.

Analysis

The Applicant seeks compensation under s. 51(2) of the *Act*.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act*. It states the following with respect to what is considered a reasonable period:

> A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.
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> A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

I have not been given a copy of the Two-Month Notice, though given the circumstances I presume it was issued under s. 49(5) of the *Act*, which permits a landlord to end a tenancy if they have entered into an agreement in good faith to sell the property, all the conditions for the sale have been satisfied, and the buyer requested vacant possession to occupy the rental unit. The Respondents indicate there may have been a misunderstanding that a close family member would be moving into the rental unit, though this point was not advanced by the Applicant. Given the submissions from the parties and that the Applicant had a copy of the Two-Month Notice in her possession, I take it the Two-Month Notice was issued on the basis that the Respondent purchasers would, themselves, occupy the rental unit, not one of their close family members.

In light of the submissions made, I am satisfied that the Respondents have, indeed, occupied the rental unit for their own use shortly after the effective date of the notice, which in this case was on May 31, 2022. The photographs show that the wall separating the upper and lower portions of the property was taken down on June 18, 2021. The Respondents advise, and I accept, that they had already moved belongings in the lower suite prior to this date and were accessing the space by walking outside to the exterior entrance for the rental unit. I further accept that the Respondents have continued to

make use of the space since that time, with photographs showing personal furnishings and a home office in the rental unit.

The Applicant argued that the spirit and tenor of the *Act* has been violated by the Respondents conduct. I disagree. To be clear, the *Act* provides certain protections and procedural safeguards to tenants in residential tenancies that would not otherwise exist at common law. It is for this reason the *Act* is said to have a protective purpose. However, that does not mean that plain interpretation of the *Act* ought to be contorted in a manner that accords to the specific circumstances advanced by a tenant in a dispute. Here, the Respondents, as purchasers, had the right under s. 49(5) of the *Act* to make written request to the former landlord for vacant possession for their personal use of the space. They did give written request. They have occupied the space for their own use. The *Act* neither explicitly nor by implication requires a purchaser to occupy a rental unit "in kind". Indeed, Policy Guideline #50 does contemplate some upgrades are permissible prior to an owner's occupation.

If the contention is that the Respondents ought to have ended the tenancy on the basis of renovation such that improper notice was given, I would find this argument to be without merit. The extent of the work undertaken here involves cutting a hole in drywall which closed off a pre-existing door opening. This work can hardly be considered extensive, and it is unlikely any permit would have been required. The Applicant argued that the rental unit was decommissioned and that there is a shortage in rentals within the community. This may be an issue for policy makers to consider. However, it is not specific consideration under the *Act*. The Respondents purchased the property. It is theirs to do with as they wish so long as they end the tenancy in accordance with the *Act*, which they have in this case.

I find that the Respondents have demonstrated that they have occupied the space for their personal use within a reasonable period of the effective date of the notice to end tenancy and have done so for more than 6 months. Accordingly, I find that the Applicant is not entitled to compensation under s. 51(2) of the *Act* and her application is dismissed.

Conclusion

The Applicant is not entitled to compensation under s. 51(2) of the *Act*. Her claim is dismissed without leave to reapply.

As the Applicant was unsuccessful, I find she is not entitled to the return of her filing fee. Her application under s. 72 of the *Act* is dismissed without leave to reapply.

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 25, 2023

Residential Tenancy Branch