Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated February 19, 2021 ("Four Month Notice"); and to recover her $100.00 Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2017, and ran to September 1, 2018, and then continued on a month-to-month basis. They agreed that the tenancy agreement required the Tenant to pay the Landlord a (final) monthly rent of $777.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $362.50, and a pet damage deposit of an uncertain amount; however, they also agreed that the Landlord returned these deposits to the Tenant in full at the end of the tenancy.

The Four Month Notice was signed and dated February 19, 2021, and it has the rental unit address. The Four Month Notice was served in person by a property manager on February 19, 2021, with an effective vacancy date of July 1, 2021. It was served on the grounds that the Landlord had to perform renovations or repairs that were so extensive that the rental unit must be vacant. The Landlord noted on the Four Month Notice that he obtained a permit from the City dated February 25, 2021. They Parties agreed that the Tenant vacated the rental unit on July 1, 2021.

In the hearing, I asked the Landlord why he served the Tenant with the Four Month Notice. He said:

> I intended and completed extensive renovations on the unit, because it was getting old and now would be a good time, as I had another unit in [the City] that I was going to start renovating at a similar time.

The Landlord said that he completed the renovations to the rental unit in five months.

The Tenant addressed photographs she submitted showing rooms in a residence with insulation, but no drywall. The Tenant testified:

> Those are photos I took of the apartment, because I had seen that the
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> renovations were actually an addition to the apartment, adding a second bedroom and taking out a wall for a new window. There was no way for me to

> stay in a two-bedroom apartment. I saw nothing had happened, but in December 2021, there was a car there and curtains and someone had moved in.

The Tenant said that she took these photographs: “about 5½ months” after she moved out.

The Tenant testified as to what she thought was an illegal rent increase and an invalid One Month Notice to End the Tenancy for Cause. The Tenant also said that Landlord breached her right to quiet enjoyment of the residential property by starting the renovations before the Tenant moved out pursuant to the Four Month Notice. However, these were not issues about which the Tenant had applied for a remedy, so they are not relevant to my considerations in this proceeding, aside from her acknowledgement that the renovations started before July 1, 2021.

The Landlord testified:

> My understand that this dispute was brought forward because the renovations were not made to this unit. I did make the renovations and they were expensive and extensive. I started to work on another unit I have, and for economies of scale, I thought I have enough funds to take care of them two at a time. The units were in their original form; they are older units, which comes with cost increases – that’s why I renovated them. The other unit started in June and I moved onto the next one in July or August.

I asked the Landlord why he started renovations before the Tenant moved out. He said:

> That was exterior work – the next door roof was replaced for another tenant. At that same time, since roofers were there, the soffits were also taken care of at the same time. It had nothing to do with the renovations in her unit.

The Advocate then had some questions for the Landlord, as follows:

> **Is it correct that you issued the Four Month Notice on basis of adding an addition to the unit?**
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> > Those were part of the original plans I had to fully renovate the unit. I contemplated a second bedroom, but once the costs on other unit were given to me, they were higher than expected and not within my affordability, so I wasn’t able to do that extension.

Did you obtain the permits required to do the second bedroom.

I had the permits.

There was discussion about the relevance of this question, but I interpreted the advocate's question as addressing the Landlord's original plan to add a second bedroom and windows; pursuant to the legislation, the Landlord would have had to have any necessary permits for this when he issued the Four Month Notice.

The Tenant testified:

> I want to respond to [the Landlord], because he didn't do the renovations that he said he would on the Four Month Notice. The unit has to be empty for that period. I believe he put a new addition, including pieces of a bedroom wall for windows. There was no question that it has to be vacant for that. That's what's listed on page two of the Four Month Notice – a new addition and window; the third item was floors, walls, and ceiling.
>
> If you look at item three: a landlord can't end tenancy to do cosmetic or routine maintenance. There's no reason to believe that the plumbing or electrical had to be [updated] in that unit.
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> Second, he said the units were in their original form. There was built in bookshelf that used to be a heater. Many things had changed [from the original form]. So, in good faith, he had to do more than cosmetic and routine renovations.

The Landlord said:

> Again, going back to what this dispute is about, the renovations were clearly made and they were expensive and extensive; she couldn't have lived there. I sense some emotional concerns that somehow, she feels slighted, not that this has anything to do with my business concerns. It was purely a business decision.
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> As I stated, my units - duplexes - are older, and because the opportunity to fully renovate another one appeared, the economies of scale led me to renovate the unit on [residential property address] and to have no issues in the future. The general goal was to update my units in [the city].

The Advocate asked the Tenant if she would have been comfortable relocating temporarily, while the renovations were being done, and she said “Yes.” However, there is no evidence before me that the Tenant gave the Landlord any notice that she intended to enter into a new tenancy agreement upon the completion of the renovations, pursuant to section 51.2 of the Act. As such, I find that this line of testimony is not relevant to my considerations.

The Advocate stated:

> [The Landlord] said his motivations were prior contemplation, and that he changed it thereafter. Section 49 states that the only reasonable way to do the renovations was to vacate. But no addition was made. If this were to be a notice not found in contravention of the Act - how can a landlord not do that every single time - suggest something big and then do cosmetic renovations. It’s an effective tactic. The entire addition – making it a two person home and adjusting the rent prevented her from moving back in. This does not demonstrate good faith. It’s someone who doesn’t respect tenancy laws and eviction notices and rent freezes.

The Landlord replied:

> I fail to understand how the lawyer – she already admitted she couldn’t have lived there. It was a clear gutting of a unit – it was thoroughly gutted and updated. It’s not an eviction for money. It was tens of thousands of dollars that it cost me - it will be years before I get the money back - so what you say is utter nonsense. The renovations took place over a long time, and required lots of money and lots of headaches.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 51.4 (1) of the Act states that a tenant whose tenancy ends under section 49.2 (renovations or repairs) is entitled to receive from the landlord an amount equivalent to one month’s free rent payable under the tenancy agreement. And subsection (4) states that in addition to the one month’s free rent, the landlord must pay the tenant the equivalent to 12 times the monthly rent. This is the case if the landlord does **not** establish that the renovations or repairs were accomplished within a reasonable period

after the effective vacancy date. The landlord may be excused from paying the tenant the 12 months rent, if extenuating circumstances prevented the landlord from accomplishing the renovations or repairs within a reasonable period after the effective vacancy date.

Policy Guideline #50, "Compensation for Ending a Tenancy", states:

> **C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS**
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> A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:
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> - accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> - used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).
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> A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:
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> - accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.
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> <u>The onus is on the landlord</u> to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49 (6) (c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant.

In the Four Month Notice, the Landlord indicated that he intended to perform renovations or repairs that were so extensive that the rental unit must be vacant. He also indicated that he had obtained all permits and approvals required by law to do this work. The Landlord included the name and permit number he obtained for this work.

The Tenant's photographic evidence shows that the rental unit was gutted and would have needed to be vacant during renovations. Further, the Tenant acknowledged in the hearing "There was no question that it has to be vacant for that."

The Tenant questioned that the Landlord did not turn the rental unit into a two-bedroom suite, with a window added to the original bedroom; however, the Landlord explained that ultimately, he could not afford to turn the rental unit into a two-bedroom suite, given the costs of this and his other rental unit renovation. However, he said he still did an extensive and expensive renovation to the rental unit. I find that the evidence from both Parties indicates that the Landlord did renovate the rental unit extensively, rather than having performed merely cosmetic changes like new paint and flooring.

I find that the Landlord has accomplished the stated purpose of conducting extensive renovations within a reasonable time of the Tenant's effective vacancy date. His evidence of having completed the renovations within five months of the tenancy ending is consistent with the Tenant's testimony that she saw that the rental unit was renovated and re-rented by December 2021, or within six months of the vacancy effective date.

When I consider all the evidence before me in this matter, I find on a balance of probabilities that the Landlord has provided sufficient evidence to meet his burden of proof on a balance of probabilities. I, therefore, dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in her Application, as the Landlord provided sufficient evidence to meet his burden of proof in this matter. The Tenant's Application is dismissed wholly 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: March 23, 2023

Residential Tenancy Branch