Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

Preliminary Matters

Preliminary Matter #1

Although witnesses for both parties attended the hearing, they were ultimately not called upon to provide testimony.

Preliminary Matter #2

The Tenant stated that the video evidence referred to at the previous hearing could not be located and as a result, it was not submitted to the Branch or served on the Landlord. I have therefore not considered it in rendering this decision.

Preliminary Matter #3

Parties in attendance on behalf of the Landlord sought an adjournment stating that the Landlord is in the hospital. No documentary or other corroboratory evidence was submitted for my consideration at the hearing in relation to the Landlord's alleged hospitalization. I asked the Tenant if they would agree to an adjournment, and they declined.

Rule 7.8 of the Rules of Procedure states that a party or their agent may request that the hearing be adjourned and that the arbitrator will determine whether the circumstances warrant an adjournment, taking into consideration the criteria set out under rule 7.9 of the Rules of Procedure. Taking this criterion into consideration, I

dismissed the request for adjournment for the following reasons. First, while there is no evidence before me that the need for an adjournment has arisen out of the intentional actions or neglect of the Landlord or their agents, nothing was submitted for my consideration in support of the testimony that the Landlord was hospitalized and therefore unable to attend the hearing. As a result, I find that the Landlord's agents did not satisfy me this was the case. Second, I note that although the Landlord attended the original hearing with their interpreter, they provided no testimony for my consideration at that hearing, despite being provided with ample opportunity to do so. Further to this, the primary purpose behind adjourning and reconvening the hearing was to allow the Tenant a fair opportunity to respond to the evidence and the testimony provided at the original hearing by the Landlord's Agent B.K., and to present their own evidence and testimony for consideration, as there was insufficient time for them to do so at the original hearing.

At the original hearing I even advised the parties after having heard fulsome testimony from B.K. on behalf of the Landlord, that I did not find it necessary to hear from the Tenant in order to render my decision. However, the Tenant was adamant that they be provided an opportunity to respond and present their own evidence and testimony, so the hearing was adjourned and reconvened. At the reconvened hearing the Tenant stated that they had nothing to add or respond to and that it was unnecessary for them to call upon their witness.

As a result, I found that there was little to no prejudice to the Landlord in denying the adjournment request. I also found that an adjournment was not required in order for the Landlord or their agents to have a fair opportunity to be heard, as they were provided with ample opportunity to be heard and call witnesses at the first hearing and no new evidence or testimony was going to be presented at the reconvened hearing by the Tenant or their witness for consideration or rebuttal.

Although the contractor who assessed the rental unit after the end of the tenancy, R.S., attended the hearing, the purpose for their attendance was to confirm statements made by B.K. at the original hearing with regards to the nature and scope of repairs needed to the rental unit for the rental unit to be deemed by B.K. and their spouse to be suitable for their occupation. As I accept B.K.'s testimony in this regard from the first hearing,

and as there were no objections from the Tenant, I therefore found it unnecessary to hear from R.S.

Based on the above, I determined that the reconvened hearing was unnecessary in order for me to render a decision, and that as a result, an adjournment due to the Landlord's alleged hospitalization was also not required. I therefore concluded the proceeding without accepting further evidence or testimony on the substantive matters raised in the Application, and I have rendered my decision on the evidence and testimony accepted for consideration by the parties and the testimony provided at the original hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the rental unit was a two-floor single family home consisting of four to five bedrooms and that at the time the two-month notice was served a month to month tenancy agreement under the act was in place. The parties agreed that the tenancy ended as a result of the two-month notice in April of 2021 and that The Tenant was provided with one month's free rent as required by the Act.

The Two Month Notice in the documentary evidence before me has an effective date of April 1, 2021, and states that it was served because the rental unit will be occupied by the Landlord's child or the child of the Landlord spouse. There was agreement that the rental unit was not occupied by B.K., the Landlord's son and the intended occupant of the rental unit, for at least six months duration beginning within a reasonable period after the effective date of the Two Month Notice. However, B.K. argued that extenuating circumstances prevented them from occupying the rental unit both within a reasonable period after the effective date of the Two Month Notice, and for at least six months duration thereafter, because the house was not as promised to them by their father, it was not their responsibility as a tenant to renovate the rental unit to bring it up to their standards, and their father was unwilling and/or unable to do so do to the financial cost involved.

B.K. stated that there was a delay in moving in after the end of the tenancy as their father, the Landlord, was supposed to paint the home and prepare it for their occupancy. B.K. stated that they and their spouse then “tried” to move into the rental unit in July of 2021, but after moving in, their spouse did not like it as too much work was required. B.K. stated that there was way more damage to the house than they thought, which is not their father’s fault as he has never seen the property, and as a result, B.K.’s wife refused to live there. B.K. stated that it was not his job as a tenant to complete all the necessary repairs needed, such as replacing carpets and drywall, and that their dad was also unwilling to take this on due to the expense. Although B.K. stated that they looked at the rental unit prior to issuance of the Two Month Notice, they acknowledged that they did not go downstairs, and that they did not go over the condition of the house in any great detail.

Both parties submitted documentary evidence for my consideration including but not limited to photographs of the rental unit, statements, and invoice(s).

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed between the parties, which ended in April of 2021 as the result of the Two Month Notice served by or on behalf of the Landlord.

Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 51(2) of the Act states that the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if they do not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and that the rental unit has been used for that stated purpose for at least 6 months' duration thereafter. The Two Month Notice in the documentary evidence before me states that it was served so that the Landlord’s child or the child of their spouse could occupy the rental unit. At the hearing B.K. appeared, stated that they are the Landlord’s child, and that the Two Month Notice was issued so that they and their spouse could move in. The Tenant did not dispute this testimony, so I accept it as fact.

B.K. acknowledged that they did not occupy the rental unit for at least six months duration beginning within a reasonable period after the affective date of the Two Month

Notice. As a result, I will now decide if the Landlord is exempted from the requirement to pay the Tenant compensation under section 51(2) of the Act, due to extenuating circumstances as set out under section 51(3) of the Act.

B.K. argued that the rental unit needed more significant updates and repairs than expected. B.K. stated that as the rental unit was not in the state expected by them and their spouse, they ended their tenancy with their father and did not occupy the rental unit because it was not their responsibility to complete the needed repairs and their father was unwilling and unable financially to have them completed.

I am satisfied that the Landlord or their agents could easily have ascertained the state of decoration and repair of the rental unit, whether the state of decoration and repair was suitable to B.K. and their spouse, what renovations and repairs were required, if any, and at what cost, prior to issuing the Two Month Notice through the exercise of reasonable due diligence on their part, should they have wished to do so. I find that the Landlord's failure to ascertain a) whether the state of the rental unit was such that B.K. and their spouse would find it suitable for occupation, and b) if not, whether they were prepared to complete any necessary renovations and repairs to bring the state of the rental unit up to the standard expected by B.K. and their spouse, prior to the issuance of the Two Month Notice, does not absolve the Landlord of their responsibilities under section 51(2) of the Act. Nor do I find their lack of due diligence in this regard and/or their failure to complete and pay for any needed renovations and repairs constitute extenuating circumstances under section 51(2) of the Act.

As a result, I therefore grant the Tenant's Application seeking compensation equivalent to 12 times the monthly rent payable under the tenancy agreement. In their Application the Tenant stated that rent was $2,000.00 per month and at the hearing, neither party disputed this amount. As a result, I accept this as fact and grant the Tenant compensation in the amount of $24,000.00 pursuant to section 51(2) of the Act.

Is the Tenant entitled to recovery of the filing fee?

As the Tenant was successful in their Application, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $24,100.00, and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$24,100.00**. The Tenant is 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 has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to issue them, are affected by the date of this decision and the associated order.

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

Dated: March 1, 2023

Residential Tenancy Branch