



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, MNETC, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant July 17, 2022 (the “Application”). The Tenant applied:

- To be paid back for the cost of emergency repairs made during the tenancy
- For compensation for monetary loss or other money owed
- For compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant appeared at the hearing with T.B. to assist. The Landlord and Co-landlord (the “Landlords”) appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to be paid back for the cost of emergency repairs made during the tenancy?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant is seeking the following amounts:

- \$3.88 for toilet repair kit
- \$81.74 for mileage for their father to attend the rental unit and repair the toilet
- \$24,840.00 under section 51 of the *Residential Tenancy Act* (the “Act”) for the Landlord not following through with the stated purpose of a Two Month Notice dated April 08, 2022 (the “Notice”)
- \$2,070.00 under section 51 of the *Act* because the Tenant was served with the Notice and did not get one month of free rent

A written tenancy agreement was provided. The Tenant said they moved into the rental unit in 2006 and signed new tenancy agreements each year with the previous owner of the rental unit. The Tenant said the agreement provided was the last written agreement signed by them and the previous owner. The parties agreed they did not sign a new agreement when the Landlords purchased the rental unit. The Landlords said they took possession of the rental unit March 31, 2022.

The parties disagreed about whether the written tenancy agreement provided is a month-to-month tenancy or a fixed term tenancy. The Tenant said they always had

month-to-month tenancies with the previous owner. The Landlords say the written tenancy agreement is a fixed term tenancy because it has a start and end date.

The Notice was provided. The Notice has an effective date of June 30, 2022. The grounds for the Notice are that the Landlord or Landlord's spouse will occupy the rental unit.

The parties agreed the Tenant moved out of the rental unit May 01, 2022.

\$3.88 for toilet repair kit

\$81.74 for mileage for their father to attend the rental unit and repair the toilet

The Tenant said the toilet in the rental unit broke and the Landlords would not fix it. The Tenant said they bought a kit to repair the toilet and their father had to travel to the rental unit to fix the toilet. The Tenant is seeking compensation for the cost of the kit and mileage for their father driving to the rental unit.

The Landlords said there were three toilets in the rental unit so one being broken was not an emergency. The Landlords said there is no proof the Tenant's father travelled to the rental unit to fix the toilet. The Landlords said they agree to compensate the Tenant for the repair kit.

\$24,840.00 under section 51 of the Act for the Landlord not following through with the stated purpose of the Notice

The Landlords gave the following testimony and submissions.

The Landlords moved into the rental unit November 29, 2022.

The Landlords noticed issues with the rental unit May 01, 2022, once the Tenant had moved their belongings out of the rental unit. For example, a room had been added in the carport in a way that did not comply with building standards. An inspector came to the unit May 06, 2022, and confirmed there were issues with the rental unit that needed to be repaired. The Landlords could not live in the rental unit while it was being repaired due to a rodent infestation, mold and other issues.

The Landlord had attended the rental unit to look at it before the Notice was issued but the Landlords did not get an inspection of the rental unit until after the Tenant moved

out. The Landlords thought only minor repairs were needed and did not think it was necessary to have an inspector look at the rental unit until they noticed further issues once the Tenant moved out.

The Landlords did not see signs of a rodent infestation until the Tenant moved out. The Landlords did not see that one of the rooms was improperly added to the carport until the Tenant moved out. The Landlords had to get architectural design plans, permits, an asbestos report and a structural engineer report in relation to repairs of the rental unit. The rental unit was vacant from August to November of 2022 while it was being repaired. An occupancy permit was issued for November 29, 2022.

The Landlords originally planned to live on one side of the rental unit while the carport side was repaired; however, it became apparent that ventilation, furnace and plumbing issues affected the whole house and the Landlords could not live in it until repairs were done.

The Tenant gave the following testimony and submissions.

The Landlords should have had an inspection of the house done before they purchased it. The mold issue could be seen when the Landlord attended the rental unit to look at it prior to the Notice being issued. The Tenant told the previous owner about rats in the rental unit. The Tenant told the Landlord about the issue with the room in the carport prior to the Notice being issued. The Tenant does not think there were issues with the rental unit that the Landlords were not aware of before issuing the Notice.

The Landlords always intended to renovate the rental unit; however, the Landlords told the Tenant they were not going to renovate the rental unit. The Landlords then started renovating the rental unit one week after the Tenant moved out.

Nobody has been living at the rental unit. Neighbours of the rental unit have not seen the Landlords living there.

T.B. said they were at the rental unit May 01, 2022, when the Tenant moved out, and the Landlords said they were not renovating the rental unit and planned to move in right away.

In reply, the Landlords denied that the Tenant told them about any major issues with the rental unit.

\$2,070.00 under section 51 of the Act because the Tenant was served with the Notice and did not get one month of free rent

The parties agreed the Notice was served on the Tenant April 08, 2022. The Notice has an effective date of June 30, 2022. The Tenant agreed they moved out of the rental unit May 01, 2022. The Tenant seeks April rent back.

The Landlords say the tenancy agreement was a fixed term tenancy and the Tenant ended it before they were allowed to and therefore should not get April rent back.

I have reviewed the evidence provided and will refer to it below as necessary.

Analysis

\$3.88 for toilet repair kit

\$81.74 for mileage for their father to attend the rental unit and repair the toilet

Section 33 of the *Act* addresses emergency repairs.

Section 7 of the *Act* sets out when compensation should be awarded.

RTB Policy Guideline 16 sets out a four-part test for compensation:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I am not satisfied repairing the toilet was an emergency repair under section 33 of the *Act*. However, I consider whether the Tenant is entitled to compensation under section 7 of the *Act*. The Tenant is entitled to the \$3.88 sought because the Landlords agreed

to pay this amount. I am not satisfied the Tenant is entitled to \$81.74 for mileage for their father attending the rental unit because there is not convincing evidence of the cost claimed before me. I do accept that the Tenant's father came and fixed the toilet after the Landlord failed to do so based on the emails in evidence and award the Tenant \$20.00 as nominal damages for this (see RTB Policy Guideline 16). In total, the Tenant is awarded **\$23.88** for these claims.

\$24,840.00 under section 51 of the Act for the Landlord not following through with the stated purpose of the Notice

The Notice was issued under section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...must pay the tenant, in addition to the amount payable under subsection (1), 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 the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, 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.

RTB Policy Guideline 50 addresses section 51 of the *Act*. The onus is on the Landlord to prove they followed through with the stated purpose of the Notice as required. The onus is also on the Landlord to prove extenuating circumstances.

I accept that the Landlords moved into the rental unit November 29, 2022, based on their testimony, the Landlord's Driver's Licence and the bills provided. Based on the same evidence, I accept that the Landlords still live in the rental unit. I did not have concerns about the credibility of the Landlords in relation to these points.

The effective date of the Notice was June 30, 2022. The Landlords moved into the rental unit around five months after the effective date of the Notice. I do not find five months to be within a reasonable period after the effective date of the Notice.

I accept that extenuating circumstances resulted in the Landlords not being reasonably able to move into the rental unit before November 29, 2022. I accept based on the evidence of both parties that the Landlord did go and look at the rental unit prior to issuing the Notice. Based on the evidence provided, I accept that some issues in the rental unit, such as the additional room in the carport, were not apparent to the Landlord when they first looked at the rental unit. I accept based on the evidence that the Landlords became aware of further potential issues May 01, 2022, when the Tenant moved out. I accept that the Landlords then took steps to repair the issues in the rental unit based on the evidence provided. The evidence supports that the Landlords did in fact have the work done they say they did. I accept that the work took time as stated by the Landlords and that this caused the delay in them moving into the rental unit. I find these points are supported by the photos, ventilation checklist, building permit fee slip, structural engineer plans, asbestos invoice, documents about the roof and inspection report.

I acknowledge that it would have been prudent for the Landlords to get an inspection of the rental unit prior to issuing the Notice. However, I accept that the Landlords did not see a need to until they saw the rental unit empty and I accept this as reasonable in the circumstances.

The Landlords are not required to pay the Tenant compensation under section 51(2) of the *Act* because I accept extenuating circumstances prevented them from moving into the rental unit before November 29, 2022.

This claim is dismissed without leave to re-apply.

\$2,070.00 under section 51 of the Act because the Tenant was served with the Notice and did not get one month of free rent

Based on the wording of the written tenancy agreement, I find it was a fixed term tenancy ending June 30, 2022, because it had a specific start and end date (see RTB Policy Guideline 30).

Under section 50 of the *Act*, the Tenant was not allowed to end the fixed term tenancy before June 30, 2022. Given this, June rent would have been free because the Tenant was served with the Notice. However, the Tenant is not entitled to return of April rent in the circumstances (also see RTB Policy Guideline 30 page 2).

This claim is dismissed without leave to re-apply.

Filing fee

Given the Tenant has been partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In total, the Tenant is entitled to **\$123.88** and is issued a Monetary Order in this amount.

Conclusion

The Tenant is entitled to **\$123.88** and is issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

Dated: April 25, 2023

Residential Tenancy Branch