



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call on October 4, 2023, having been adjourned from August 31, 2023 and September 20, 2023, concerning an application made by the tenant seeking monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by an agent and Legal Counsel. The landlord's agent and the tenant each gave affirmed testimony, and the tenant called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the landlord has complied with the *Act* by using the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The landlord's agent testified that the landlord purchased the property on July 4, 2022 and the tenant was resident in the rental unit at that time. The fixed-term tenancy began on November 1, 2019 and reverted to a month-to-month tenancy after October

31, 2020. Rent in the amount of \$3,800.00 per month was payable on the 1st day of each month and there are no rental arrears. Rent was increased by \$200.00 per month for additional occupants. On October 21, 2019 the tenant paid a security deposit and pet damage deposit combined in the amount of \$3,800.00.

The landlord's agent further testified that on August 10, 2022 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property by email, and a copy has been provided for this hearing. It is dated July 27, 2022 and contains an effective date of vacancy of November 4, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the child of the landlord or landlord's spouse. The tenant vacated the rental unit on November 1, 2022. The tenant received compensation from the landlord by not paying any rent for the last month of the tenancy.

The landlord does not dispute that no one moved into the rental unit, but the landlord's agent testified that extenuating circumstances exist that prevented the landlord's child from moving in. When the property was purchased, the intent was for the landlord's daughter and son and wife to move in with 3 children. One has a medical condition that is being treated. An Affidavit of the landlord's agent has been provided for this hearing with an exhibit to the Affidavit, being a letter from the landlord's daughter's psychiatrist, who recommended that the landlord's daughter move out of her parent's property to be away from her mother in order to treat some underlying issues. When the Notice to end the tenancy was issued, the landlord's daughter was feeling quite good. However, between then and when the tenant moved out, and events in September changed the circumstances. The landlord's daughter had increased anxiety, little or no sleep, and her condition made activities more difficult than usual. Family needs to monitor her constantly to prevent her from self-harm, and the doctor prescribed medications.

The medications did not completely resolve the landlord's daughter's medical issues, and in October she was taken to emergency. The daughter attained restless leg syndrome, which required stronger medications, which sedated her and prevented her from living on her own and she was unable to move onto the property.

In the spring of 2023 the landlord's daughter was better, and moved into the rental unit in September, 2023. The landlord did not fulfill the stated purpose, but only due to unforeseen circumstances. The landlord's agent further testified that if the landlord had known that renovations were required, it would not require the tenant to vacate.

Renovation work started in mid-December, which ere secondary and not extensive enough to require vacant possession.

The landlord's son is a university student in Newfoundland, and was trying to transfer his courses, but found out that that wasn't possible, so he didn't proceed with the transfer and he and his partner are still in Newfoundland.

The tenant testified that there were not individual suites, just a home. The tenant lived there with his partner and 3 kids. The closing date of the home was July 4, and in July the landlord's agent told the tenant that the landlord was intending to knock it down; he was an architect and the tenant was told it would take some time. In August the tenant received an email with a Two Month Notice to End Tenancy For Landlord's Use of Property stating that the landlord intended to renovate so that the landlord and the landlord's daughter can move in. A copy of the email has been provided as evidence for this hearing.

Since the landlord intended to renovate, the wrong notice to end the tenancy was given and not appropriate. The tenant drove by the rental unit beginning on November 9 and from December to August renovations were still ongoing. The tenant does not dispute the health issues of the landlord's daughter, but the tenant's partner was also going through issues. The tenant told the landlord that 4 months notice was required. The tenant went to the rental unit to pick up a package and saw the renovations; no one could have lived in it the way it was. The tenant knew the landlord intended to renovate, but did not know at what level and did not dispute the Two Month Notice to End Tenancy For Landlord's Use of Property.

The tenant's witness is the tenant's partner, who testified that starting in early December the witness saw trucks and extensive yard work being done on the rental property. Doors were open and painting and construction was in progress, mostly on the exterior. Active construction went on until August, 2023. The witness drove by multiple times, and estimates about 3 to 5 times each month walking their dog in the area.

It was very difficult at that time to find alternative housing. The market is difficult and the tenant and partner have a large family. The witness had been suffering from chronic pain and was to have surgery which required the tenants to move early and pay double the rent so that the witness had a place to live post-surgery. It cost a lot of money and the tenants had to get rid of a lot of stuff due to lack of space, which was painful, a struggle, and a massive undertaking.

The witness is employed in the construction industry in various large scale buildings, as well as renovations, houses and is now a metal teacher. The extensive renovations happening in the rental unit included the hardwood floor, replacing carpet, structure of rooms, painting, and repairing damage to walls. Mostly the floors take an extensive amount of time. The tenant and witness painted the rental unit when they moved into the unit in 2019.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The landlord's position regarding demolishing the rental unit is addressed in his Affidavit. The landlord is not trying to conceal discussions, but informed the tenant of the plan. The property was surveyed in June, 2022. The intent to demolish was taken off the table in August, 2022, and the alternate plan was for the landlord's daughter to move in.

Extenuating circumstances existed that prevented the landlord's daughter from moving in. For all intents and purposes, since the landlord did not demolish, that is irrelevant. There are not 2 units, and renovations were not extensive enough to seek that permission from the Residential Tenancy Branch. The primary purpose was for the landlord's daughter to move in. The landlord could not have foreseen the increasing health issues of his daughter.

SUBMISSIONS OF THE TENANT:

On August 10 the landlord said that the landlord intended to make renovations to prepare the home for the landlord and his daughter to move in. The tenant agrees that the landlord didn't do structural renovations, but renovations took until May, 2023, and the landlord ought to have used a Four Month Notice to End the tenancy. The landlord's daughter was supposed to move in with her father. A normal time frame would be 15 days, not months. The landlord intended that the whole time.

Analysis

Where a tenant makes an application for the additional compensation, the onus is on the landlord to establish that the landlord took the necessary steps to use the rental unit for the purpose contained in the notice to end the tenancy within a reasonable time after the effective date of the notice and for at least 6 months duration. The law also states that I may excuse the landlord from paying the additional compensation if I am satisfied that extenuating circumstances exist that prevented the landlord from accomplishing that stated purpose.

I have reviewed all of the evidence, including the Affidavits provided by the landlord and sworn Declarations provided by the tenant.

Legal Counsel for the landlord submitted that if there were intentions of the landlord to renovate, that is not relevant. The tenant's position is that if the landlord intended to renovate, permission from the Residential Tenancy Branch was required as well as a Four Month Notice to end the tenancy. However, regardless of the extent of renovations, the law states that if a landlord fails to act in good faith or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property within a reasonable time after the effective date of the Notice and for at least 6 months duration there are monetary consequences. That would include failing to occupy the rental property within that reasonable time, whether or not the renovations undertaken or completed were or were not extensive enough to warrant ending the tenancy.

The landlord's position is that the landlord's daughter was no longer able to reside by herself due to medical conditions. I find that the timeline of events is important, and are as follows in the evidence:

- The landlord purchased the rental property on July 4, 2022 while the tenants were residing there, with the intention of demolishing it.
- In July or early August, 2022 the landlord's agent contacted the tenant to inform the tenant that a new structure was in the design phase.
- In August, 2022 the landlord changed his mind because he wanted his daughter to move in, as well as his son and wife.
- The Two Month Notice to End Tenancy For Landlord's Use of Property is dated July 27, 2022 and was not served until August 10, 2022.
- Also on August 10, 2022 the landlord's agent emailed the tenant stating that either the landlord or his daughter would be moving in and the landlord wanted to renovate the house to prepare it for that.
- The landlord's daughter is 26 years old and has been seeing specialists and therapists since she was 18 years old.
- A letter from another physician dated September 11, 2023 states that on September 27, 2022 the landlord's daughter informed the physician that a plan was under way for her to move out to manage her conflicts with her mother, and that she continued to require close support throughout the rest of 2022 and to the current date.
- In September, 2022 the landlord's daughter's situation changed and new medications were prescribed.

- On September 26, 2022 the tenant was assessed via Telehealth conference for right renal colic, and had a 3 week history of significant right-sided flank pain, and lower urinary tract symptoms.
- On October 12, 2022 a physician assessed the landlord's daughter, who was diagnosed with diabetes in 2021, and reported migraines with visual aura, and past medical history included diabetes, depression and hyperlipidemia, and the physician "reiterated the importance of tight control over blood sugar, blood pressure and serum lipids."
- On October 20, 2022 the prescribed medications were doubled.
- The Affidavit of the landlord's agent states at paragraph 18 that the tenant "accepted our good faith intention and confirmed that he would be moving out on November 4, 2022."
- The tenant vacated the rental unit on or about October 31, 2022.
- On November 9, 2022 a physician had a follow-up appointment with the landlord's daughter, and his report indicates that past medical history included depression, borderline personality disorder, fatty liver, diabetes type 2, obesity and migraine.
- Also on November 9, 2022 the tenants walked by the home and witnessed construction materials and landscaping work.
- From November 2022 to August 2023 the tenant and the tenant's witness observed that the home was a construction site during that entire time period, and that there would have been no way for anyone to move into the home despite extenuating circumstances.
- Construction/renovations started in December, 2022, and completed on the lower level 2 or 3 months later, and the main floor started in May, 2023.
- No one moved into the rental unit.

Ending a tenancy is a very serious matter, and in the case of a landlord ending a tenancy for the landlord's use of the property the landlord cannot be indecisive. The Notice states that the rental unit will be occupied by the landlord's child. Legal Counsel for the landlord suggests that starting in September, 2022 the landlord's daughter was not able to live on her own, and that family needs to monitor her constantly.

Considering the medical evidence, I am satisfied that the landlord knew full well prior to issuing the Notice that his daughter could not live on her own due to her past medical history. The email to the tenant from the landlord's agent states that the landlord wanted to renovate to prepare the home for the landlord and the landlord's daughter to live, but neither moved in. I accept that the medical issues of the landlord's daughter

worsened at least for a time requiring constant care. However, if the landlord was acting in good faith he would have moved in with his daughter as stated, who would then have had the constant care. If the landlord's son was to move in, the landlord ought to have ensured that his son could transfer his university courses prior to issuing the Notice. I find that the landlord did not act in good faith and had no intention of moving his child or children into the rental unit, but renovated for another purpose.

The parties do not agree on the amount of rent payable; the landlord's agent testified that rent was \$3,800.00 and increased by \$200.00 for additional occupants. The tenant's evidence indicates that rent was \$3,857.00 per month. I accept the latter, and I find that the tenant is entitled to compensation of 12 times the monthly rent of \$3,857.00, or \$46,284.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in the amount of \$46,384.00. The landlord must be served with the order, which may be filed with the Courts for enforcement under the *Court Order Enforcement Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$46,384.00.

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: October 12, 2023

Residential Tenancy Branch