

DECISION

Introduction

This hearing was convened following applications for dispute resolution from both parties under the *Residential Tenancy Act* (the Act), which were heard simultaneously.

The Tenant requests the following:

- a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act

The Landlord requests the following:

- a Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As the Landlord acknowledged service of the Tenant's Notice of Dispute Resolution Proceeding package and did not raise any concerns regarding service, I find the Landlord was served in accordance with the Act.

As the Tenant denied receiving the Landlord's Notice of Dispute Resolution Proceeding Package. The landlord said that he served the dispute resolution package and his evidence via registered mail and provided a copy of his receipt with tracking number. He said that the package was not picked up and that it was eventually returned to his house. I reviewed the evidence provided by the landlord and confirmed that the registered mail was sent to the correct address.

The tenant acknowledged that he had received a notice of a package but said that he had declined to pick it up believing that it was some sort of a scam due to it lacking a file number and not having his name spelled correctly on it. I deem the Landlord's dispute resolution package to have been served to the tenant in accordance with section 88 of the Act.

Service of Evidence

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

The Tenant said that he did not receive any evidence from the Landlord. Further to the preceding analysis concerning the landlords service of his dispute resolution package, I deem the Landlord's evidence to have been served to the tenant in accordance with section 88 of the Act.

Issues to be Decided

Is the tenant entitled to a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act?

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to recover the filing fee for this application from the tenant?

Preliminary Matters

Due to time constraints, I was unable to hear all claims of the parties. For this reason, I informed the parties at the outset that I was only going to hear only the most urgent claims to ensure we finish on time. In the circumstances, I determined the most urgent claim to be whether the Tenant was owed compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy.

My analysis and decisions with respect to these claims are provided below.

Is the Landlord entitled to compensation for unpaid rent?

I informed the parties at the outset that, due to time constraints, I would not be able to hear this claim. For this reason, the Landlord's application for compensation for unpaid rent is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Is the Landlord entitled to recover the filing fee for this application from the tenant?

I informed the parties at the outset that, due to time constraints, I would not be able to hear this claim. For this reason, the Landlord's application for compensation for unpaid rent is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenant moved out of the rental unit on May 1, pursuant to the two-month notice that they received from the landlord.

On May 15 the Tenant became aware that a stop work order had been posted to door of the property. On this document it indicated that the City required that the Landlord provide architectural drawings, which the Tenant proposed meant that the Landlord must have been intending to move walls. The Tenant further proposed the Landlord must have been doing extensive renovations and that this would have been intended to create a basement rental apartment.

The Landlord testified that he began living at the property on May 2, staying in the basement while renovations were performed. His wife did not want to stay there during the renovation as she has a respiratory medical condition which would be adversely affected by paint fumes and dust from the tiling he intended to complete. The landlord provided a medical note from a doctor in support of this claim.

The landlord emphasized that the stop work order that was received indicated that he was to stop the renovation but did not indicate that he could not reside in the unit. The Landlord provided copy of an e-mail that he received from city planning indicating that he could proceed with minor renovations in the interim.

After the Landlord finished tiling and painting, approximately May 21, his wife and son gradually began moving their items and furniture into the property. The Landlord has lived there since with his family ever since.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Is the tenant entitled to a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act?

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the act, a landlord must pay the tenant an amount that is equal to 12 times the monthly rent if the landlord does not comply with the stated purpose of the two-month notice within a reasonable time after service and for at least six months duration.

I am satisfied that the Landlord took steps to satisfy the prescribed circumstance for ending the tenancy within a reasonable period after the date the tenancy ended. In reaching this conclusion I have accepted that the Landlord began living at the property on May 2, immediately after the Tenant had left, staying in the basement while renovations were performed. I accept that his wife did not want to stay there during the renovation as she has a respiratory medical condition. I also accept that the stop work

order did not preclude him from residing in the unit. Lastly, I accept that the landlord's family began moving in on May 21st and that they have resided there continuously ever since.

The Tenant's argument, in essence, has been to equate the landlord's decision to perform renovations with an intention to remodel the house for the purpose of re-renting. When asked to elaborate as to why he believed a landlord would be precluded from renovating the property that they lived in, the tenant argued that the renovations must have been substantial for the city to have stopped them and that the only logical explanation for such extensive renovations must be to create a rental unit within the property. I do not find the Tenant's claim compelling.

For the above reasons, the tenant's application for a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy is dismissed, without leave to reapply.

The Landlord's application for compensation for unpaid rent is dismissed, with leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the tenant under section 72 of the Act is dismissed, with 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 Act.

Dated: November 15, 2023

Residential Tenancy Branch