Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of an application for dispute resolution initiated by the tenants on October 19, 2018 against the landlord.

The tenants argue that the landlord was, and is, in breach of section 51 of the *Residential Tenancy Act* (the "Act") and seek relief by way of compensation in the amount of $21,000.00, pursuant to section 67 of the Act. They also seek compensation in the amount of $100.00 for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on February 15, 2019 and the tenants and the landlord's agent attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues with respect to the service of the Notice of Dispute Resolution Proceeding or documentary evidence was raised by either party.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Are the tenants entitled to compensation under section 51 of the Act?

2. Are the tenants entitled to compensation under section 72 of the Act?

Background and Evidence

The tenants (both of whom testified interchangeably throughout the hearing, and to whom I refer simply as "tenants" unless otherwise specified) testified that they lived in the rental unit for twelve years until they were evicted by the landlord. They moved into the rental unit, a multi-rental unit home, in August of 2006. After receiving a Two Month Notice to End Tenancy for Landlord's Use of Property on May 18, 2018, and then a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit on May 29, 2018, the tenants vacated the rental unit on August 1, 2018.

The tenants testified that monthly rent at the time they moved out was $1,750.00. The monthly rent on their new place now costs $2,750.00.

As an aside, I note that the tenants' application indicated their tenancy ended on September 30, 2018, but tenant V.C. clarified that they moved out on August 1, 2018. September 30, 2018 was the date that their neighbour vacated. The landlord's agent did not dispute the tenants' testimony regarding the tenancy start or end dates, or regarding the monthly rent amount.

On May 18, 2018, the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property in person on the tenants. The notice indicated an effective end of tenancy date of July 31, 2018. A copy of this notice was submitted into evidence. This notice indicated that the reason the landlord was ending the tenancy was that the "landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

Eleven days later, on May 29, 2018, the landlord served a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice") on the tenants in person. The Notice indicated that the effective end of tenancy would occur on September 30, 2018. A copy of the Notice was also submitted into evidence.

The Notice stated, on page two, that "I [the landlord] am ending your tenancy because I am going to [. . .] demolish the rental unit." Below this section of the Notice the landlord marked the box indicating that "I have obtained all permits and approvals required by law to do this work." And, within the "Planned Work" section of the box titled "The work I am planning to do is detailed in the table below" the landlord wrote "DEMOLISH".

Though the two notices were submitted into evidence, and the information thereon was acknowledged by the tenants, I asked the tenants what their understanding was of why the tenancy was ending. They testified that it was their understanding the tenancy was ending because the house was being demolished, and that the landlord was going to "tear it down and build twelve homes."

The tenants testified that when they moved out on August 1, 2018, no move out Condition Inspection Report was completed but they, and the landlord, completed a "walk through" inspection. They also testified that they found it rather odd—considering that the rental unit was to be demolished—that the landlord, via her agent, wanted the rental unit to be clean, including the carpets and floors.

Not long after they moved out, they revisited the neighbourhood (one of the tenants has a friend who lives across the street) and noticed that there were tenants living on either side of their now-former rental unit. They noticed this when they drove by the property in late August or early September 2018. In October they drove by and stopped at the rental unit to see if there was any mail. There was, they discovered, a new tenant residing in the rental unit, "a guy living there." And, that there was everything in the rental unit that one would expect of someone residing there. He had apparently moved into the rental unit near the end of September 2018.

The tenants testified that they drive by the rental unit four to five days a week and that the property remains undemolished, and even last week the property is still there. They remarked, as an aside, that they had to put down their dog because of the move; their son was traumatized by this.

The landlord's agent testified that in respect of issuing the notices "everything [was] done in good faith." He explained that he had initially issued the Two Month Notice to End Tenancy for Landlord's Use of Property, but that one of his tenants had made him aware of the recent change in legislation necessitating the subsequent issuing of the four-month Notice.

The landlord's agent referred me to the municipality's Preliminary Layout Approval (the "PLA") issued on May 10, 2018, which referred to the landlord's and the landlord's co-owners' (hereafter the "owners") proposed subdivision of property on which the rental unit is located. A copy of the 9-page PLA was submitted into evidence. The PLA refers to the owners' proposed subdivision submitted on November 16, 2016 and revised on January 26, 2018. The landlord's agent testified that they had received approval from

the municipality regarding the proposed subdivision. I note, however, that the PLA states that “the final approval of the subdivision must occur during this period [of one year].” The landlord’s agent added that, to start development, the rental unit must be demolished.

The landlord’s agent testified that demolition was ready to proceed by October 1, 2018, and that two of the landlord’s partners were ready to go. “We were the only ones left with the home,” the landlord’s agent commented. However, the agent then referred me to a Contract of Purchase and Sale, which was submitted into evidence. An offer of sale was accepted in September 2018, with the removal of the subject clauses to occur by the end of October. The contract was to close at the end of June 2019.

The Contract of Purchase and Sale (the “Contract”) is dated September 27, 2018. The seller’s name is that of the landlord, and the buyer’s name is that of a third party. The Contract indicates that the sale will be completed on June 27, 2019, and that possession will occur on June 28, 2019. The Contract further indicates that “The Property and all included items will be in substantially the same condition at the Possession Date as when viewed by the Buyer on September 20 yr. 2018.

In the meantime, due to an ongoing issue of vandalism, drug addicts, and frequent visits by police, the landlord decided to permit two tenants to remain in the property rent-free in order to keep an eye on the property. The agent submitted into evidence copies of BC Hydro bills related to the two tenants’ use of hydro at the property, and, an undated, signed statement from the two tenants which reads, in part:

> The owner [landlord’s name] asked us to reside in her property to ensure that no drug addicts or homeless people break into the property and damage the property. We are taking care of the exterior and interior of the property and are allowed to do so RENT FREE [. . .] until the sale completes in June/2019.

In rebuttal and in their final submissions, the tenants argued that they were told that the rental unit was sold, and that it was destined for demolition. They further argued that “we could’ve stayed there if other tenants were [also] there rent free!” The tenants also referred, almost in passing, some issues in regard to financing or funding problems that the landlord was experiencing; the tenants did not elaborate on this point.

In his rebuttal, the landlord’s agent testified that “at the end of the day,” the landlord did everything in accordance with the law, that the tenants were fantastic tenants over the

past twelve years, and that “what reason would [we] have to kick them out?” In other words, why would the landlord have asked them to vacate if the landlord had truly not intended to demolish the rental unit. He stressed that the two rent-free tenants were simply staying on the property and “not living there.” The landlord’s agent concluded his submission by stating that it is “up to the new purchasers” to demolish the rental unit and the adjoining property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Here, the tenants seek compensation under section 51, and specifically section 51(2), of the Act which states:

> (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
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> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
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> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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
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> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not 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 or, if applicable, the purchaser who asked the landlord to give the notice 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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(c) 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.

The Four Month Notice was issued under section 49(6)(a) of the Act, which states:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

I note that the landlord initially issued a two-month notice, but then corrected this by issuing the four-month Notice in compliance with sections 49(6) and 49(2)(b) of the Act.

In this case, instead of taking steps to accomplish the stated purpose for ending the tenancy, the landlord promptly sold the rental unit. The landlord accepted an offer to purchase the property less than 8 weeks after the tenants vacated the rental unit. Selling the rental unit to a buyer, regardless of the intentions of that buyer, is quite a different purpose than taking steps to demolish the property.

Indeed, the landlord accepted an offer to purchase before the effective end of tenancy date had even occurred on September 30, 2018. Whether the landlord intended in good faith to demolish the rental unit at the time she issued the Notice is moot, given the fact that she proceeded with selling the property before the end of September, instead of

taking steps to demolish the property. Sections 49 and 51 operate in tandem: a landlord must not only issue a notice to end a tenancy in good faith, they must also follow through on the reason why they ended the tenancy. A landlord cannot issue a notice to end tenancy in good faith and then simply renege on that reason, unless there are, of course, extenuating circumstances.

I find it unusual, given the circumstances of an impending demolition, that (a) the landlord expected the rental unit to be clean when the tenants vacated the rental unit, and (b) that she keeps two people living rent-free in the remainder of the property to "[take] care of the exterior and interior of the property." Certainly, a seller will want to ensure that property remains relatively secure pending a closing sale, but that a landlord would expect the tenants to clean the floors and carpets when the rental unit is destined for the wrecking ball defies logic. What it does not defy is the strong inference that, despite whatever the PLA states, it is unlikely that the landlord issued the Notice in good faith. The landlord's agent testified that the landlord had approvals in place from the municipality. But, the PLA does not anywhere state that such approvals were in place. Whatever the landlord's true intentions, she failed to take steps within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy.

Were there extenuating circumstances pursuant to section 51(3) that exempt the landlord from having to compensate the tenants under section 51(2) of the Act?

"Extenuating circumstances" is not defined in the legislation. However, *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* provides some assistance in interpreting this term. Section E "Extenuating Circumstances" (page 3 of the Policy) reads as follows:

> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
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> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
> - A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

The commonality of the examples of when there are extenuating circumstances is that the event is outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority, or control.

In the case before me, the landlord willingly and deliberately sold the rental unit before the effective date of the Notice had even arrived. The landlord's agent was rather straightforward in this regard and offered no testimony or evidence for me to find that there existed extenuating circumstances that might exempt the landlord from section 51(2) of the Act. As such, I find that the landlord is not exempt from being liable under this section of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation against the landlord under section 51 of the Act. Accordingly, pursuant to section 67 of the Act, I award the tenants compensation in the amount of $21,000.00, which is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

As the tenants were successful in their application, I grant them additional compensation in the amount of $100.00 for the filing fee, pursuant to section 72(1) of the Act.

Conclusion

I hereby grant the tenants a monetary order in the amount of $21,100.00. This order, which must be served on the landlord, may be filed in and enforced as an order of the Provincial Court of British Columbia.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 21, 2019

Residential Tenancy Branch