Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On August 6, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing. The Landlord attended the hearing with P.L., and B.B. attended as an agent for the Landlord. All parties provided a solemn affirmation.

Tenant C.S. advised that they served the Notice of Hearing and evidence package to the Landlord by registered mail and the Landlord confirmed that this package was received on August 16, 2019. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that her evidence was served to the Tenants by registered mail and the Tenants acknowledged that they received this evidence on September 27, 2019. As this evidence was served within the timeframe requirements in accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were sufficiently served with the Landlord's evidence. As such, this evidence was accepted and considered when rendering this decision.

B.B. made a request to add a Respondent to this Dispute Resolution proceeding and the Tenants were asked for their position regarding naming an additional Respondent to this Application. As the Tenants had named the Landlord according to the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice") that they were served and thus, they were unwilling to name another party

as a Respondent, I was satisfied that another Respondent was not necessary to be added to this hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Notice?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2013 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 30, 2019. Rent was established at $1,150.00 per month and was due on the first day of each month. A security deposit of $575.00 and a pet damage deposit of $575.00 were also paid.

All parties agreed that the Tenants were served with the Notice on February 27, 2019 in person. The reason the Landlord checked off on the Notice was “I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant.” The Landlord indicated on the Notice that the effective end date of the tenancy was June 30, 2019.

Tenant C.S. advised that this was a wrongful eviction as the Landlord sold the rental unit to a developer and there was no intention to renovate the rental unit. The rental unit was subsequently sold by the developer to another party and it has been since rented out to new tenants. The Tenants talked to their old neighbours to confirm that this has happened, and they submitted, as documentary evidence, a letter confirming these details. As the Landlord did not use the rental unit for the stated purpose on the Notice, their position is that they are owed compensation in the amount equivalent to twelve months’ rent (**$13,800.00**) pursuant to Section 51(2) of the *Act* as the Landlord did not

use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

B.B. advised that a Contract of Purchase and Sale, dated February 11, 2019, was entered into between the Landlord and the developer. As per clause five of this contract, the sale was conditional on vacant possession of the rental unit so that the developer could commence extensive repairs. The developer confirmed that he had the necessary permits to conduct this work. On February 26, 2019, the subjects were removed and the Landlord subsequently served the Notice. On the Notice, the Landlord wrote "Duplex has been sold and according to the new owner they intend to do the following" and a detailed list of the planned work was outlined.

B.B. referred to another Contract of Purchase and Sale, dated June 13, 2019, where the rental unit was subsequently assigned to another purchaser. On September 6, 2019, a letter was sent to the developer, who had originally purchased the rental unit, advising him to complete the work outlined on the Notice. B.B. stated that the Landlord acted in good faith, that she was contractually obligated to serve the Notice, and that the completion of the renovations were out of her control as it was up to the developer to complete them. As such, it is his position that the Landlord should not be responsible for compensating the Tenants as they had a contractual agreement with the developer to serve the Notice, that the developer did not comply with the reason for ending the tenancy, and that there has been no harm done to the Tenants by the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 5 of the *Act* states the following:

This Act cannot be avoided

> ***5*** *(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*
>
> *(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

With respect to this circumstance, Section 49(6) of the *Act* states that the Landlord may serve the Notice for the following reasons:

(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;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the Strata Property Act;

(d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

I also find it important to note that Policy Guideline # 50 states that "if a landlord ended a tenancy to renovate or repair a rental unit, a step to accomplish that purpose might be: Hiring a contractor or tradesperson, Ordering materials required to complete the renovations or repairs, Removing fixtures, cabinets, drywall if necessary for the renovations or repairs. Evidence showing the landlord has taken these steps might include employment contracts, receipts for materials or photographs showing work underway."

As well, I find it important to note that the Notice was served on February 27, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 *(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*

(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*
> *(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.*

Finally, the Policy Guideline outlines the following about extenuating circumstances: “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:

- 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”

As the Notice was accepted and the tenancy is over, intention and good faith do not need to be considered as that requirement has ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

When reviewing the evidence and testimony before me, the *Act* is clear in that the Landlord may issue the Notice if the Landlord wanted to conduct renovations or repairs of the rental unit and vacant possession was required to do so. While I understand the Landlord's position, I find it important to note that the crux of her argument is that she was relying on her contractual obligation in the Contract of Purchase and Sale. However, this term in a different document has no authority to circumvent the *Act*. There are no provisions in the *Act* that permitted her to serve this Notice of behalf of the developer, despite what was written on the Notice. A term such as this would amount to contracting outside of the *Act*, as per Section 5 of the *Act*.

In addition, as the Landlord was the only one allowed to serve this Notice, the Landlord did not have the necessary permits required as per the Notice. Moreover, it would not have been possible for the developer to acquire the necessary permits to conduct this work prior to purchasing the property and becoming the landlord to the Tenants.

Should the developer have required vacant possession of the rental unit because he intended to conduct renovations or repairs of the rental unit, the proper course of action would have been for the developer to have purchased the rental unit and assumed the Tenants' tenancy. Once he became their landlord, then he would have been permitted to serve the Notice himself for the stated reason on the Notice.
With respect to the Tenants' claim for twelve-months' compensation owed to them, the consistent evidence is that the Landlord served this Notice on behalf of the developer, in error, contrary to the *Act*. As such, the undisputed evidence is that the Landlord did not use the property for the stated purpose on the Notice. Consequently, I am satisfied that the Landlord has failed to meet any of the requirements to use the rental unit for the stated purpose as per the *Act*.

While neither the Landlord nor B.B. made any direct submissions specifically indicating that this situation constituted an extenuating circumstance, when reviewing the totality of the evidence, I do not find that this scenario would qualify as an unforeseen or extenuating circumstance as outlined in the Policy Guideline. Consequently, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$13,800.00**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

12 months' compensation	$13,800.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$13,900.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$13,900.00** 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 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: November 7, 2019

Residential Tenancy Branch