



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Phoenix Homes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenants, the owner, landlord's agent, and the landlord's legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recover their filing fee?

Background and Evidence

While I have turned my mind to all the documentary and oral evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

Tenants' submissions-

The tenants submitted that this tenancy began approximately in September 2012 and that at the end of the tenancy, the monthly rent was \$1,050. The tenants submitted that during the course of the tenancy, there were several changes in ownership of the property.

The tenants' monetary claim against the landlord is \$18,000. In explanation, the tenants submitted that they are entitled to the equivalent of 12 months' rent of \$1,500, not for their former rental unit, but for their current rental unit.

As the basis for this claim, the tenant submitted that they are entitled to this amount as they received a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Notice) from the landlord.

The tenants asserted they are entitled to compensation, as the landlord did not have the permits and approvals when the Notice was issued to them. The tenants filed into evidence a copy of the Notice.

The Notice received by the tenants was dated March 14, 2019, and was served on the tenants by the landlord's property manager, AR, listing an end of tenancy date of July 15, 2019.

As a reason for ending the tenancy, the Notice listed the word "Demolish" in the box stating the details of the work which was planned for the rental unit.

The tenants said that they vacated the rental unit at the end of September 2019, later than the effective date of the Notice, July 15, 2019, as they were in discussions with AR about finding another rental unit. According to the tenants, AR offered them an illegal

basement suite and to stay in the rental unit until that basement suite became suitable for occupancy. That potential rental ultimately failed, as they found their own rental unit.

The tenants claimed that as they had to move, they are entitled to storage costs of \$971.25.

Landlord's response –

The landlord submitted that the rental unit was one of four properties on the rental unit road owned by the landlord in the development of a 112 unit condominium building. The landlord asserted that all homes are at least 60 years old.

The principals for the landlord had for many months been working with architects and engineers with the City to gain approval for the development of the site.

The landlord and legal counsel referred to a letter from the City, dated March 27, 2019, setting out the requirements for the final approvals as determined by the third reading held on March 25, 2019. The landlord submitted a copy of the requirements for the approval, which are quite onerous and involve a multitude of issues.

The landlord submitted that one of the requirements from the City, as shown by another exhibit, was the demolition of the existing dwellings with the required permits, which included the rental unit. The landlord asserted, however, that in order to obtain the required permit to demolish the existing dwelling, the landlord was required to conduct a hazardous material testing, due to the strong likelihood that the home was built with asbestos.

This testing involves opening the walls and taking out portions of the floor, the window casing, the ceilings, and the walls, as well as paint material from the various surfaces.

The landlord referred to another exhibit in their evidence, which was the inspection and consulting, Pre Demolition and Hazardous Material Inspection Report, dated December 13, 2019. This report reflects that one of the living room walls appeared to have asbestos.

The landlord submitted that in addition to the hazardous materials report, it is a requirement for all financing institutions to have a full environmental assessment of the land to be completed.

The landlord submitted that the landlord did apply for the demolition permit on December 16, 2019, which was only three days after receiving the Hazardous Material Report dated December 13, 2019.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

As the claimants, the tenants had the burden to prove their claim, on a balance of probabilities.

In the case before me, the undisputed evidence is that the tenants were issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49(6)(a) of the Act, for a move-out date of July 15, 2019. The tenants said they moved out in September 2019, after some delay while having discussions with the landlord's agent about finding another rental unit.

The Notice said that the rental unit would be demolished.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, I find the tenants submitted insufficient evidence to show that the rental unit was not demolished, the stated purpose, within a reasonable time after the effective date of the Notice, or in this case, within a reasonable time after they ended the tenancy at the end of September 2019.

While the tenants' sole argument for claiming monetary compensation was due to the lack of a landlord's permit prior to issuing the Notice, the Act does not provide for monetary compensation in the event the landlord issue a Four Month Notice prior to obtaining permits.

The tenants chose to accept the Notice, without filing an application for dispute resolution. Had the tenants questioned the lack of a permit, that matter would have

been relevant if the tenants filed to dispute the Notice. The tenants had the right to ask the landlord to see the permits. By not disputing the Notice, the Notice is valid and the question of permits is moot.

As I have found the tenants submitted insufficient evidence that the 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, I dismiss the tenants' claim, without leave to reapply.

As to the tenants' claim for storage, I find that the tenants have not submitted any evidence to show that the landlord is responsible for choices made by the tenants in how to store their personal property. I dismiss the tenants' claim of \$971.25.

As a result, I dismiss the tenants' application for monetary compensation and for recovery of their filing fee.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent, storage costs and recovery of the filing fee is dismissed, due to insufficient evidence.

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: July 6, 2020

Residential Tenancy Branch