



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on January 20, 2020 seeking compensation for monetary loss or other money owed. Additionally, the tenant seeks reimbursement of the Application filing fee.

The matter proceeded by way of hearing initially on June 12, 2020. That matter was adjourned to ensure the tenant received prepared evidence of the landlord. This reconvened hearing was held on July 7, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In this hearing, the tenant confirmed receipt of that evidence.

In the conference call hearing I explained the process and provided each party the opportunity to ask questions on the procedure. Both parties had the opportunity to present submissions and respond to the other’s evidence and testimony.

Preliminary Matter

At the outset of the hearing, the agent for the landlord questioned the timeline of the tenant filing for dispute resolution in this case. They pointed to the *Act* section 49(8)(b) that stipulates a tenant may apply to dispute the Four Month Notice within 30 days after they receive it. They stated, given the date of the Application here, the tenant is stopped from speaking to the issue, unless they can provide exceptional circumstances. A finding of exceptional circumstances by an Arbitrator may allow an extension of the time limit.

The tenant stated they were not disputing the issuance of the Four-Month Notice. They reiterated that they were making a monetary claim for money owed, as a legitimate reimbursement legislated within the *Act*.

I find section 49(8)(b) is the correct piece implementing a timeline when the tenant wants to dispute the issuance of a Four-Month Notice; however, this is not applicable to what the tenant applied for here. The tenant is applying for monetary compensation. The applicable section of the *Act* here is section 60 which sets the latest time an application for dispute resolution can be made. For this type of application, the timeline is “within 2 years of the date that the tenancy to which the matter relates ends. . .”

With no relevant timeline restriction precluding the tenant’s Application in this matter, I proceed with my consideration of the issues below.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation pursuant to section 51 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

Neither party submitted a copy of the tenancy agreement; however, the tenant provided details and the landlord confirmed the same. The tenant started as a roommate in the unit in 2016. When the landlord acquired the unit in July 2019, there was an agreement already in place for the rent amount of \$1,520.00 per month. Payment records provided by the tenant verify this amount.

The landlord met the tenant on July 20, 2019. On July 21, 2019 the landlord issued a ‘Four Month Notice to End Tenancy’ (the “Four-Month Notice”). The landlord served the document in person to the tenant. This specified the move out date of November 30, 2019. The reason the landlord ended the tenancy was they were going to “perform renovations or repairs that are so extensive that the rental unit must be vacant.” The details of this work are that the landlord will remove walls and convert the unit –

combined with two others in a single building -- to a single-family home. The landlord indicated: "I have obtained all permits and approvals required by law to do this work."

The tenant moved out of the unit on November 17, 2019. They did not dispute the landlord's issuance of the Notice within 30 days of its service on July 21, 2019 as per section 49(8)(b) of the *Act*.

The tenant referred to the evidence provided by the landlord which shows the landlord initiating contact with a design firm on December 4, 2019. They stated the landlord's evidence does not include any proof of payment for the full cost of renovation, nor a start date for any work to commence.

The tenant also presented that they have not observed any work on the property since their end of tenancy in November 2019. This included the timeframe right up until the date of the hearing. The size of the municipality means the tenant travels past the property frequently and can observe what is happening there. They submitted that "seven or more months is unreasonable" for renovations not to have commenced when this was the reason given for the landlord issuing the Four-Month Notice.

Further, the tenant referred to the content of the Four-Month Notice. The landlord indicated: "I have obtained all permits and approvals required by law to do this work." Information on the document indicates "Your landlord has to have all permits and approvals that are required by law in place before they give you this notice."

They also referred to information point #8 on the document that gives information on entitlement to additional compensation. Page 3 is not in the evidence, but the tenant stated they did receive the full three-page document. This point states:

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.

The tenant concluded by stating: "it seems clear on the [Four-Month Notice] that plans for a renovation should be in place before its given and all the steps taken by the landlord over the last few months should be in place before the [Four-Month Notice] was served."

The landlord brought their own submissions to the hearing with a prepared affidavit. This contains exhibits A through H. The pertinent evidence concerns communication between the landlord and a design firm starting in December 2019. There is a “Interior Design Fee Proposal” dated December 18, 2019 which sets out the scope of work, design phases, a fee estimate, and terms and agreements. There is communication from March 2020 which shows an unexpected delay due to health restrictions in place. After consultation, the design firm drafted floor plans, and these are set out as options dated April 24, 2020.

In the hearing, the landlord made the following points in their statements:

- they had plans, but the unit rented to the tenant was unique – they had no way to get a feel for the entire building and they were “trying to make plans as best [they] could”;
- once the tenant moved out, they planned to have the designers come in;
- by early December, they had decided on the designer after many interviews – the contract was signed on December 19, 2019;
- health restrictions and the emergency state in the province interrupted the usual process;
- the scale of the project is large, and this necessitates having excellent plans in place – this is a major change to the building structure;
- family illness led the landlord to pause the project for a “six week to two month period”;
- they were not sure whether plans or approvals were needed from the local municipality and were having discussions with project staff about the need for that.

Analysis

Under section 49(6) of the *Act* a landlord may end a tenancy if the landlord has all necessary permits and approvals required by law and “intends in good faith, to . . . renovate or repair the rental unit in a manner that requires the rental unit to be vacant.”

A tenant’s compensation in special circumstances is governed by section 51 which provides:

- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant. . . 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.

In order to make a finding of fact, and thereby determine an entitlement of compensation, I shall determine whether or not the landlord took steps to accomplish the stated purpose for ending the tenancy. If the steps taken are not established in the evidence, I shall then determine whether extenuating circumstances prevented this.

I find as fact that the landlord took steps to accomplish the stated purpose for ending the tenancy within a reasonable period after November 17, 2019. I make this finding for the following reasons:

- this is not an amount of work that involves cosmetic repairs or other repairs that could have been completed during the tenancy – evidence for this is the Interior Design Fee Proposal and the draft floor plans in place;
- the landlord hired a design firm very soon after the end of tenancy – the initial design proposal set out the scope of work, design phases and fee estimates;
- the completed document indicates there was consultation between the landlord and design firm – I find this entails considerable dialogue and reference to the character and age of the property;
- the completed document itself was provided on December 18, 2019 – this is two weeks after the landlord made initial contact with the designer after the end of the tenancy;
- the proposal contains a monetary estimate – I find it more likely than not the tenant underwent consultation and planning to establish a budget for this project;
- the landlord hired a project development manager and a contractor – this enters into the technical aspects of the job as well as restrictions which may hamper actual construction work.

I find these are significant and measurable steps the landlord undertook toward moving the project forward. The evidence shows the landlord undertook this work very soon after the actual end of tenancy on November 17, 2019.

The tenant did not establish on a balance of probabilities that the work did not or would not proceed. I find the project was large in scope and required different stages of planning. This is in line with the reason the landlord issued the Four-Month Notice.

Having made this finding, there is no need for me to consider and determine whether extenuating circumstances prevented the landlord from initiating the renovation which was the reason for issuing the Four-Month Notice. Although not integral to my finding of fact above, I do find that extenuating circumstances beyond the landlord's control caused pauses and unforeseeable interruptions to phases of the project. This occurred early in the following year of 2020; however, this was after the landlord made the initial important steps. These include precautions in establishing social distancing and even a serious health concern involving a family member of the landlord. These arose after the initial contact and plan for the project was in place and moving forward. I find these circumstances – attested to by the landlord -- address the tenant's concerns about the length of time the project appears to be taking. Certain phases of design and interaction with contractors necessarily require visits to the actual site, and I find it reasonable that interruptions significantly impacted those following phases.

The tenant also raised the issue that permits and approvals were not in place prior to issuance of the Four-Month Notice. This is in line with their summary submission that "it seems clear . . . that plans for a renovation should be in place before its given." I find this question concerns the issuance of the Four-Month Notice itself, and the validity thereof. The tenant had the right to apply for a cancellation of the Four-Month Notice; however, they did not do so within the legislated timeframe of 30 days after its issuance.

The landlord indicated on the Four-Month Notice that "I have obtained all permits and approvals required by law to do this work." In the hearing the landlord stated they were not sure whether permits or approvals were needed before work can commence. I find this may have led to consideration that undermines the validity of the notice, and points to the landlord giving incorrect information on the Four-Month Notice.

While this may impact the credibility of the landlord on the genesis of the project and original motives for ending the tenancy, at this stage my concern is on appropriate compensation where the *Act* allows. I factored the landlord's credibility into the weighing of their evidence showing the project's start and early stages, against the concerns raised by the tenant that work had not yet begun. My finding is that the

evidence presented by the landlord stands as proof of plans in place and steps taken within a reasonable period. This outweighs the concerns raised by the tenant which do not present a preponderance of evidence that no work has yet commenced.

For the reasons outlined above, I find the tenant has not presented sufficient evidence to show on a balance of probabilities that they are entitled to compensation for damages or loss that is the responsibility of the landlord.

As the tenant was not successful in this hearing, they are not entitled to recover the filing fee for their Application.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and without 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 *Residential Tenancy Act*.

Dated: July 10, 2020

Residential Tenancy Branch