# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCT, FFT

Introduction

In this dispute, the tenants seek compensation against their former landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act"). They also seek compensation for moving costs, pursuant to section 67 of the Act. In addition, the tenants seek recovery of the filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on April 19, 2020 and a dispute resolution hearing was held, by teleconference, on August 25, 2020. The landlord's agent (hereafter the "landlord") and one of the tenants attended the hearing and the parties were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The landlord is a corporate entity, which also appears to be a numbered company.

No issues of service were raised by the parties, except for one matter which the tenant explained involved the landlord's serving of evidence two days past the required timeline. However, given the outcome of this dispute, I make no further findings of law regarding the service of evidence.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Are the tenants entitled to compensation under section 51(2) of the Act?

2. Are the tenants entitled to compensation under section 67 of the Act?

3. Are the tenants entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

By way of background, the tenancy started on July 1, 2018 and ended on December 31, 2019. Monthly rent, according to the written tenancy agreement, was $1,700.00. Rent later increased to $2,300.00. The tenants paid a security deposit of $850.00. A copy of the tenancy agreement was submitted into evidence. Copies of receipts for the higher rent were also tendered into evidence.

On November 5, 2019, the landlord served the tenants with a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Notice"). The Notice indicated that the tenancy would be ending on March 13, 2020. On page two, the Notice indicated that the reason the tenancy was ending was so that the landlord could "demolish the rental unit"; the appropriate box was ticked. About a third of the way down the page, the landlord indicated that a municipal permit was issued on November 5, 2019 for "single family dwelling demolition," and the permit number was referenced. A copy of the Notice was submitted into evidence.

The tenants were worried that they would not find a place if they waited until the end of the tenancy (the tenant testified that he is a father of two children, one of whom is special needs). So, they gave their notice to move out early, effective December 31, 2019.

The tenant then testified that on or about January 22, 2020, he was driving past the rental unit and observed a man out front repairing some beams under a porch. Video evidence of this was tendered into evidence. He drove by a few more times to "see what was going on." In about the middle of March 2020, the tenant saw a gentleman outside the house with a truck, and he was moving bunk beds into the house. From the back of the house, the tenant observed that every room had a bunk bed in it.

In April 2020, the tenant and his good natured, "friendly, chatty" wife went to visit the house to check for mail. They struck up a general conversation with three Guatemalan farm workers who lived in the house. There was video submitted by the tenants showing that the farm workers were living in the house. He also noted that he drove by the house in the evening and observed the various workers moving about the inside of the house, in their rooms, and one of them was doing the dishes.

In respect of their claim, the tenant argued that based on the evidence of the landlord (to which I shall refer in a moment), and based on the timeline of how events unfolded, that there "is no absolute probability [the rental unit] would be demolished." He further

explained that “me and my family could still be living there,” and that the landlord took advantage of the pandemic and the state of emergency to house his farm workers in the property. “He’s had these Guatemalan people there for three months at least,” the tenant added, and said that he “feels cheated out of our house.”

In his testimony, the landlord remarked that all of the tenant’s testimony (in respect of the tenancy and the Notice, that is) is factually correct. He noted that he had enjoyed very positive interactions with the tenants and that they left on good terms.

However, he argued that their claim is not legitimate, and that extenuating circumstances arouse which prevented him from demolishing the property. He testified that when he issued the Notice in November 2019, he had “every expectation to demolish the house in June 2020. And, he explained that he needed about ten to twelve weeks “to arrange for set-up” for the demolition. Basically, he needed about three months to get the property ready for the demolition.

During 2019, the landlord was actively engaged in property development design, and had retained an architect, and so forth. The intent was to build a multi-family housing property. The development permit wound its way through the city hall bureaucracy but stalled between Christmas and late February 2020. The planner with whom the landlord was dealing had gone on paternity leave. He had no idea that they would go on paternity leave.

In February 2020, COVID-19 started making its entrance onto the scene and was becoming more serious. The landlord decided to be cautious about taking further steps to demolish the property. He was thinking about a contingency plan for where to potentially house his farm workers. In the week of March 12-19, 2020, the state of emergency was declared, and the *Emergency Program Act* was applied.

The landlord explained that his business is an “extremely regulated” industry and that farm workers are classified as “high risk.” His workers were designated as essential workers. He testified that he needed a place to house the workers and an area to quarantine them. In May 2020 the landlord had some new arrivals from Mexico and Guatemala, and the workers were first quarantined for two weeks in Richmond before taking up residence in the rental unit. There were 7 or 8 people living there.

In the end, the landlord expects that he is likely “not going to demolish until next spring, or April [2021].”

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.

**Claim for Compensation under Section 51**

Turning first to the primary claim, section 51(2) of the Act states that

> (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.

In this dispute, the effective date of the notice was March 13, 2020. According to the landlord, no steps were taken to demolish the rental unit after that date. Rather, the landlord chose to house his farm workers in the rental unit, and they (give or take new arrivals and whatever turnover may occur) continue to reside in the rental unit as of today's date. No ten- to twelve-week set-up was ever undertaken, and no other steps appeared to have been taken by the landlord to get the property demolished. Finally, while the landlord spoke of the almost-two-month file hold-up with the municipality between Christmas 2019 and February 2020, this covers a period of time before the effective date of the notice had even passed.

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 that the landlord, pursuant to section 51(2) of the Act, did not take steps within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy. Indeed, the landlord stated that he does not intend to demolish the house until 2021.

Having found that the landlord was in breach of section 51(1)(b) of the Act, I must now turn to the issue of whether there were extenuating circumstances that prevented the landlord from accomplishing the demolition of the property.

Section 51(3) of the Act states that

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

The meaning of “extenuating circumstances,” while not defined in the Act, is briefly examined in policy guideline 50, and which states that “[a]n 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.” Various examples of situations where one could find there is an extenuating circumstance, and a few examples of scenarios where there would not be an extenuating circumstance, are then provided in the guideline. What may be inferred from these few examples is the principle that an extenuating circumstance must be unforeseen, and not something arising from a lack of due diligence or an action within the control of the respondent. And, to reiterate, it must be an event that *prevented* the landlord from accomplishing the stated purpose for ending the tenancy.

The landlord argued that the circumstances of the pandemic are extenuating circumstances that prevented him from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy. Namely, that the rental unit was to be demolished.

I must disagree. While the issue of where to house the farmworkers was no doubt important, none of this particular matter, I find, prevented the landlord from demolishing the property. How and in what manner the landlord chooses to provide accommodations

to his farm workers is his business, but it is unrelated to his obligation to demolish the rental unit as stated in the Notice. If the municipal planner who was responsible for helping the landlord move on to next steps was on leave for the entire duration, then perhaps there would be argument to be made. But that is not the case here.

Indeed, I find the event of March 5, 2020, in which multiple bunk beds were being moved into the house, to be indicative of the landlord's intentions to house his workers for reasons entirely unrelated to the pandemic, which had not yet arrived in full force. There was no state of emergency or other factor that existed on March 5 that would have prevented the landlord from taking steps to get a demolition underway.

Finally, while I do not find that there was any malice or intent to deceive the tenants out of their tenancy on the part of the landlord, I also do not find that there were extenuating circumstances that directly prevented the landlord from taking further steps to demolish the rental unit. Rather, the landlord took advantage (and I do not mean this in any pejorative sense of the word) of having an empty house in which to house the workers on what appears to be a long-term temporary basis. Last, I find it unusual that the landlord was repairing rotten beams on January 22, 2020 – well before there was much inkling of a looming pandemic – on a property scheduled for demolishment.

In summary, I do not find that there were extenuating circumstance that prevented the landlord from accomplishing the stated purpose for ending the tenancy. As such, taking into consideration all the oral and documentary evidence presented, 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 pursuant to section 51(2) of the Act.

As per the tenants' Monetary Order Worksheet, oral testimony, and documentary evidence, they are entitled to compensation equivalent to twelve months' rent, which must be separated due to the different rent that was paid during the tenancy. The tenants are hereby awarded $25,200.00.

**Claim for Compensation for Moving Costs**

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?

3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
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> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

First, I find, based on the evidence, that the landlord did not comply with the Act. The landlord breached the Notice by not demolishing the rental unit as stated. Second, but for the landlord's breach of the Act in issuing the Notice, the tenants would not have had to move, and thus incur moving costs. Third, the tenants have proven, by way of documentary evidence, that the moving costs were $850.00.

Fourth, as the tenants explained in their application, they obtained some quotes from other moving companies, who provided estimates of $1,200.00 to $1,500.00. Given that the tenants took reasonable steps to mitigate any loss resulting from the cost of moving by doing their research and choosing the lowest cost mover, I find that they did whatever was reasonable to minimize the loss.

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 has met the onus of proving their claim for moving costs of $850.00.

**Claim for Filing Fee**

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, I therefore grant their claim for reimbursement of the $100.00 filing fee.

In summary, the tenants are awarded $26,150.00.

Conclusion

I hereby grant the tenants a monetary order in the amount of $26,150.00, which must be served on the landlord. Should the landlord fail to pay the tenants the amount owed, the tenants may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 26, 2020

Residential Tenancy Branch