Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nam Moodyville Development Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on May 6, 2020. They are seeking an order for: compensation for monetary loss; the return of deposits they paid; and the Application filing fee.

The matter proceeded by hearing on August 27, 2020 pursuant to section 74(2) of the *Residential Tenancy Act*. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and a representative for the landlord each attended the hearing and I provided each with the opportunity to present oral testimony. In the hearing, the landlord confirmed they received the documentary evidence prepared by the tenant. The landlord stated they did not prepare documents in advance of the hearing. On this basis, the hearing proceeded.

Preliminary Issue

On May 6, 2020 the tenant also applied for the return of the initial security deposit amount they paid at the start of the tenancy. They did so by submitting an application amendment on May 6.

In the hearing, they stated that the landlord forwarded the full amount of the security deposit. They received this cheque on July 20, 2020. They stated they are not claiming this amount from the landlord. I have so amended their application and dropped consideration of this amount from my analysis and findings 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 their Application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement they signed with the previous landlords on July 1, 2016. This was for the tenancy that started on August 1, 2016, the going forward on a month-to-month basis. The rent was $1,900.00 payable on the 1st day of each month. During the tenancy, the rent increased to $2,025.00. The tenant initially paid a security deposit of $900.00 on July 11, 2016.

The party named as the landlord in this hearing purchased the property on January 20, 2020. This stemmed from their offer on the property on September 12, 2019. The area was "pre-zoned" by the city, with the condition for the seller to contact the municipality in the event of a sale. The landlord hired an architect who submitted for a design on January 20, 2020. The city's condition in place was to disconnect services to the property until the permit for building could be verified.

The landlord issued a 'Four Month Notice to End Tenancy' (the "Four-Month Notice") on February 6, 2020. An agent for the landlord served the document in person to the tenant. This specified the move-out date of June 7, 2020. The reason provided on page 2 of the document was that the landlord was going to "demolish the unit." There were no permit or approval details on page 2 of the document. There were no details in the set table on page 2 of the document.

The tenant gives evidence in this hearing that they were aware the sale of the unit was happening at the end of January. They met with the only other tenant in the building and the realtor of the landlord on February 6, 2020. They stated the Four-Month Notice "came out of the blue" and noted there were no permit numbers on the document. The realtor at that time "insisted the document was valid." The tenant then paid rent to the landlord on February 6, 2020.

They decided to examine other options to live elsewhere and gave the landlord a written notice to end tenancy on February 18, 2020. A copy of this document appears in the tenant's evidence. They provided a forwarding address and requested their one-month compensation owed because of the Four-Month Notice as well as the security deposit.

The landlord signed and dated this notice from the tenant as February 17, 2020 and "this was the end of communication."

The tenant's move out date was February 28. They did not dispute this Four-Month Notice within 30 days of its service on February 6, 2020.

In the hearing, the tenant described how they later drove by the property and observed a cat in the window of the suite. On April 29, the tenant and their daughter were looking for a misplaced cheque at the address. They made the inquiry as to missing mail by knocking on the door. A person answered and informed them that they moved into the unit on April 4, 2020, and they had an agreement with the landlord.

The tenant submitted a statement from their daughter as evidence to attest to this fact pattern. The statement includes the detail that the tenant took pictures to prove the date of their visit, and that: "it looked like all units were occupied and some gardening had recently been done."

The tenant here applies for compensation of a single month of rent ($2,025.00), owed because of the landlord's issuance of the Four-Month Notice. Additionally, they apply for 12 months of the monthly rent amount ($24,300). They stated on their Application: "The suite is now being rent again and the existing tenant moved in April 4, 2020." Further: "[The landlord] has not acted in good faith and is now renting the suite again, and therefore must compensate me an additional 12 months rent."

The landlord did not provide documentary evidence for this hearing. They spoke to the purchase of the property on January 20, 2020, finalized after their offer on the property on September 12, 2019. The area was "pre-zoned" by the city, with the condition for the seller to contact the city in the event of a sale. The landlord hired an architect who submitted for a design on January 20, 2020. The city's condition in place was to disconnect services to the property until the permit for building could be verified.

The landlord provided that at the time of purchase, two tenants in either side of the unit were served by an agent. The tenant here then delivered their notice to end tenancy on February 18, 2020.

The landlord here – who asserts they are not the actual landlord in this situation – maintained that they had "no ill intention" to evict the tenant. They stated they hired another company to find tenants after this tenant moved out. With the tenant ending the tenancy this way, the landlord missed two months of rent income, and thus "it would have made sense to retain this tenant and make more money". They acknowledged reimbursing the tenant for the deposit amount when they realized what was happening with this tenancy.

Analysis

Under section 49(6) of the *Act* a landlord may end a tenancy to demolish a rental unit. This means the complete and irreversible destruction of the rental unit. As written in the *Act*, this is contingent on the landlord having "all the necessary permits and approvals required by law" and intends to complete the work in good faith. The means the landlord must have all necessary permits and approvals required by law before they serve a notice to end tenancy to a tenant.

Under section 50 a tenant may end the tenancy early by giving the landlord at least 10 days' notice to end on a date earlier than the effective date of the Four-Month Notice. Where the tenant pays rent prior to giving this notice, the landlord must refund rent paid for a period after the date of the tenant's notice.

Under section 51(1) a tenant is entitled to receive one month's rent. A tenant may withhold this amount from the payment of the final month's rent.

Important to the facts in this hearing, section 51 also includes the following provisions:

(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.

In this matter, the landlord did not give an indication that the permits and approvals were in place. This is not provided for on the Four-Month Notice. In the hearing, the purchaser (who here assumes the obligations of the landlord) stated that at the time of the hearing there was

no plan in place, and no permit to demolish. I find it clear from the evidence that permits were not in place prior to the issue of the Four-Month Notice.

This would normally invalidate the Four-Month Notice had the tenant chosen to challenge the landlord on that issue. The tenant did not, and instead gave their own notice to end the tenancy early, by giving the landlord at least 10 days' notice as set out in section 50. Their notice is dated February 18, for a move-out date of February 28.

The question of permits and approvals also enters into the question of the tenant's entitlement to compensation, though more indirectly. To be clear, section 51(2) examines the question of the landlord's use within a certain timeframe, while section 51(3) examines whether extenuating circumstances prevented work from being accomplished.

I find it clear from the evidence that work was not undertaken within a reasonable period after the effective date of the notice. This ties back to the statement of the landlord in the hearing which establishes that there are no plans or permits in place.

The landlord here presented that city offices and the municipality were "all shut down". Presumably public health measures were in place and this interrupted the normal flow of business. I consider the fact that no permits or approvals were in place prior to issuance of the Four-Month Notice as being the primary consideration here. This piece of evidence outweighs the fact that processing times or wait times likely increased due to office closures or other restrictions. The landlord did not present a contingency plan or any other evidence that a demolition of the property was going to happen.

I find steps were not taken to accomplish the stated purpose for ending the tendency. Also, extenuating circumstances did not prevent the work from being accomplished. On its face, the Four-Month Notice was issued for the purpose of demolition of the rental unit. In fact, there is no evidence to show demolition was imminent or even more than a consideration at some point prior to the issuance of the Four-Month Notice. Moreover, I find as fact there was another tenant present in the unit, at least by April 4, 2020. This is further evidence that runs counter to the notion of extenuating circumstances preventing demolition. This fact strongly suggests that demolition was not planned at any point prior to the issuance of the Four-Month Notice.

With these considerations in mind, I find the tenant is entitled to the amount that is 12 times the monthly rent. The tenant stated that it was the sales agent of the landlord who gave the Four-Month Notice to them on February 6, 2020. There is no evidence to show otherwise. By section 51(2) I find it more likely than not that it was "the purchaser who asked the landlord to give the notice" to the tenant. This makes the purchaser, carried over as the landlord in this

hearing, obligated to pay the amount in question. This is the amount of $24,300.00 as claimed by the tenant.

The evidence shows the tenant paid rent upfront for the month of February, then promptly gave notice to end the tenancy. They did not recover this amount from the landlord in line with section 51(1). This amount remains outstanding and the tenant is entitled to the amount of $2,025.00.

As the tenant was successful in this application, I find the tenant is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of $26,425.00. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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: September 23, 2020

Residential Tenancy Branch