



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord's agent (mother) attended with the translator AC and the lawyer CH ("the landlord"). The landlord did not attend. Both tenants attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Are the tenants entitled to the following?

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The landlord submitted substantial testimony and documents including an 84-page submission in a lengthy hearing. As well, the tenant submitted many photographs, videos and a comprehensive written submission. Not all this evidence is reproduced here. Only key facts relevant to my findings are reproduced.

The parties agreed on the following:

1. The tenants rented the unit, a detached residential house, commencing August 15, 2017; a tenancy agreement was signed but no copy was submitted;
2. The monthly rent payable on the first of the month was \$2,900.00;
3. The tenants paid a security deposit at the beginning of the tenancy which was returned to them;
4. The landlord purchased the unit on June 28, 2019;
5. The landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use ("Notice") on July 11, 2019 with an effective date of September 30, 2019; the primary reason for the Notice indicated on the form is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of the individual's spouse);

6. The Notice also provided a second reason, that is:

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;

7. The landlord submitted evidence only with respect to the first ground, that is, that the unit will be occupied by the landlord;
8. The tenants received one month's rent as compensation pursuant to section 51(2);
9. The tenants vacated the unit on September 30, 2019 and did not dispute the Notice;
10. The landlord has never occupied the unit as renovations have not been completed;

11. The tenants brought this application on June 21, 2020 claiming 12 months rent as compensation for the landlord's failure to occupy the unit as required under the Act.

Key portions of the landlord's evidence are summarized as follows:

1. The landlord's agent (the landlord's mother) testified at the hearing that the unit was a "gift" to her son BSXZ, the landlord, from her; the family consisted of the mother, the landlord BSXZ, and one other younger son who attended a high school located near the unit;
2. The landlord intended to occupy the unit as his main residential home with the rest of the family; several supporting documents to this effect were submitted including the landlord's statutory declaration which was part of the purchase documents;
3. The landlord hired a contractor to carry out renovations anticipated to be completed in one month at which time the family would move in to the unit;
4. The tenants vacated on September 30, 2020;
5. The renovations started on October 1, 2020; as stated in the landlord's written submissions, the contractor "removed the stove, refrigerator, kitchen cupboards, flooring, doors, and toilet";
6. The renovations were stopped on October 4, 2020 when the municipality issued a Stop Work Order, a copy of which was submitted;
7. The Stop Work Order stated the reason was "interior demolition";
8. The landlord stated that the municipality did not inspect the unit prior to issuing the Stop Work Order although no confirmation in this regard from the City was submitted;
9. The landlord understood that a permit was required for the renovations and decided, as she stated, "why not carry out a bigger project"; accordingly, the landlord decided to expand the "minor" renovation project;
10. The landlord's written submissions explained as follows in part (as written):

...[I]t may be case that permits were not required for the Minor Renovations; however, the landlord did not know whether permits were required for the Minor Renovations, but accepted that the Stop Work Order did not allow him to proceed with any work on the Property until the Stop Work Order is lifted and a building permit issued.

The Landlord decided to pursue a bigger renovation project given that permits were now required. ..[in the meantime] the property is not in a habitable state.

...

Upon retaining counsel [...], the Landlord has now learned that the minor Renovations may not have required the building permit.

It is not the fault of the Landlord to have been issued a Stop Work Order 4 days after the tenancy ended and to have adhered to the Stop Work Order until the Stop Work Order is lifted....

The Stop Work Order has effectively prevented the Landlord from occupying the Property from October 4, 2019 to the present.

11. During October 2019, the landlord began the “long and tedious” process of applying for a building permit and hired a designer to design the expanded renovation project;
12. On October 18, 2019, the landlord applied for an electrical permit to accommodate the expanded renovation project; the electrical permit was granted on October 31, 2020;
13. On April 23, 2020, the building permit application process began; the landlord submitted copies of many emails, documents and drawings beginning in April 2020 charting the progress;
14. Hazardous materials were discovered in the house in April 2020 further enlarging the project;
15. The renovation will be completed in an estimated two months time at which time the landlord will move in to the unit with his mother and younger sibling.

The landlord claimed the events amounted to “extenuating circumstances” under the Act. That is, the Stop Work Order was an unforeseen event, an “extenuating circumstance”, which led to the decision to expand the project beyond what was originally intended. Hence, the landlord asserts, the landlord is not responsible to compensate the tenants for 12 months’ rent.

The important aspects of the tenants’ evidence were as follows:

1. When the tenants were served with the Notice, they were suspicious that the landlord did not intend to occupy the unit after they moved out;

2. The suspicions were based on visit(s) by the contractor and landlord to the unit prior to the tenants moving out; because of language differences, the tenants were not able to comprehend the conversations but surmised that a major renovation was planned;
3. However, the tenants contacted the landlord's realtor and were assured by the landlord's realtor that the landlord was aware of the Act's compensation provisions; accordingly, the tenants did not dispute the Notice;
4. Since moving out, the tenants stated that they have continued to live in the same area, and they go by the unit frequently;
5. Soon after they vacated, a tarp was placed over a flattened portion of the rear fence which they surmised was done to permit construction vehicles to get onto the property;
6. After the initial few days of renovations in the unit, all activity in or about the unit ceased until April 2020, a period of 6 or 7 months;
7. The tenants submitted many videos and photographs of the unit taken every few weeks for six months after they vacated the unit; the evidence was accompanied by a list of dates and their observations;
8. The unit appeared abandoned unit after they vacated; mail accumulated on the landing and stairs; they categorized some of the mail as "important", such as letters from the City; during periods of snow fall, the walkway and sidewalk in front of the unit was untracked and uncleared; rubbish and recyclables, were uncollected;
9. They concluded the landlord issued the Notice to vacate to get them out so the landlord could carry out an extensive renovation; when they were unexpectedly served with the Stop Work Order, the landlord was required to comply with the municipal permitting process;
10. The landlord never intended to occupy the unit within a reasonable time after the tenants vacated and always intended a major renovation project.

In summary, the tenants asserted that the landlord did take steps to accomplish the stated purpose within a reasonable time and did not occupy the rental unit for the purpose stated on the Notice within a reasonable time. They assert there are no extenuating circumstances within the meaning of the Act. They seek twelve months' rent as compensation ($\$2,900.00 \times 12 = \$34,800.00$) under the provisions of section

51(2). The tenants also request reimbursement of the filing fee of \$100.00 for a total claim of \$34,900.00.

The landlord argued that they took steps to achieve the stated purpose in the notice within a reasonable time (the first four days of October 2019). They also assert that the Stop Work Order was an extenuating circumstance.

Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the landlord's use of the property.

Counsel for the landlord submitted two previous cases of the RTB in support of the landlord's position for this hearing.

Section 64(2) of the *Act* addresses previous decisions as follows:

Dispute resolution proceedings generally

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under the Part.

Credibility

Given the contradictory positions of the landlord and tenants, I must first turn to a determination of credibility. In assessing the reliability of the parties' evidence, all submissions and documents were considered.

I found the tenants calm, forthright and reasonable. I find their version of events to be credible, logical and consistent.

Considered in its totality, I find the landlord not to be a reliable witness regarding the issues that are key to this matter. I do not find the landlord's testimony credible that the landlord intended a "minor renovation" when the landlord issued the Notice requiring the tenants to vacate the unit. I find the landlord provided illogical and unbelievable testimony which I do not find to be in keeping with the facts as I understand them about why the Notice was issued. I give little weight to the landlord's version of events relating to the landlord's intention on issuing the Notice, the planned scale of the renovations at

the time the Notice was served (30 days), and the landlord's plans to occupy the unit within 30 days.

Section 51

When a Notice such as this is issued, the landlord is required under the Act to take steps to move in or use the unit for at least 6 months beginning within a reasonable time.

Section 51 sets out the obligation of the landlord to occupy the unit as stated in the Notice. Section 51 provides in part as follows (emphasis added):

(2) Subject to subsection (3), the landlord [...] 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.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

Taking Steps to Accomplish the Stated Purpose

A step is an action or measure that is taken to accomplish a purpose. What this means depends on the circumstances. For example, 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.

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends.

However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

I have considered the totality of the evidence and I find the landlord did not comply with either part of section 51(2). I find that steps were not been taken, within a reasonable period after the effective date of the notice, to accomplish ***the stated purpose*** for ending the tenancy, that is, for the landlord to move in. I also find the unit was not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the landlord's "stated purpose", that is, to occupy the unit, was incorrectly set out in the Notice requiring the tenants to vacate. I find the evidence leads me to a conclusion that the intention on issuing the Notice was to conduct a significant renovation project. In essence, I find the purpose was to renovate the unit and not to occupy it.

In reaching this conclusion, I have considered that the landlord never contacted the City to explain the "minor" nature of the planned renovations and to discuss the removal of

the Stop Work Order. I have also considered the quick application for an electrical permit more in keeping with a major renovation. I considered the acknowledgement that the landlord and family have never moved in and the date of the proposed occupancy remains uncertain.

I find it the landlord's testimony unconvincing that the landlord changed the project from a "minor" one to a more extensive one only when issued the Stop Work Order.

I find it more likely than not that the landlord intended to carry out a major renovation at the time the Notice was served, did not intend to move in to the unit within a month as testified, and did not issue the Notice in good faith in the first place.

Extenuating Circumstances

A landlord may be excused from the obligation to occupy the unit if there were "extenuating circumstances".

Section 51 states in part as follows (emphasis added):

(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 assessing what constituted a "reasonable time" under section 51(2)(a) and (b), the Guideline states in part as follows:

A reasonable time is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose or ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

In this case, there is no dispute the unit was vacant from the end of October 2019 and will not be occupied for at least two more months, that is, possibly in November 2020, a period estimated by the landlord to be a total of 13 months. The occupancy date is uncertain, and the landlord did not testify as to a date when the family planned to move in. I find this is not a "reasonable time".

I do not accept the landlord's evidence as believable that the landlord issued the Notice in good faith only, after the unexpected circumstance of being issued a Stop Work Order within days of starting renovations, to suddenly change their plans. I find the resultant delay of more than a year not to be reasonable.

I find the issuance of the Stop Work Order, uncontested by the landlord, not to amount to an "extenuating circumstance".

I therefore find section 51(3)(a) is not applicable to this situation.

Award

Accordingly, pursuant to the provisions of section 51(2), I award the tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, that is \$34,800.00 ($\$2,900.00 \times 12 = \$34,800.00$).

As the tenants were successful in their claim, I award the tenants reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the tenants a monetary order of **\$34,900.00** calculated as follows:

ITEM	AMOUNT
Section 51(2) one month rent x 12 ($\$2,900.00 \times 12 = \$34,800.00$)	\$34,800.00
Reimbursement of filing fee	\$100.00
TOTAL	\$34,900.00

Conclusion

I grant a monetary order in favour of the tenants in the amount of **\$34,900.00**.

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 29, 2020

Residential Tenancy Branch