Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding N VISION PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on May 20, 2020, wherein the Tenant sought $13,900.00 in monetary compensation from the Landlord pursuant to sections 51(2) and 72 of the *Residential Tenancy Act* (the "*Act*").

The hearing was conducted by teleconference at 1:30 p.m. on September 24, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. The Landlord's representative, S.C., confirmed the Landlord did not submit any evidence in response to the Tenant's claim and intended to rely on the Tenant's evidence and S.C.'s testimony.

No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant stated that he first moved into the rental unit June 29, 2015. At that time his rent was $850.00 per month. The property then sold to a development company, who in turn created a new company, N.V.P.L. The Tenant and N.V.P.L. entered into a new tenancy agreement which provided that the Tenant was to pay rent in the amount of $1,150.00 per month.

On August 27, 2019 the Tenant received a 4 Month Notice to End Tenancy (the "Notice"). The Notice indicated that the rental unit needed to be vacant as the Landlord intended to perform extensive asbestos removal. The Notice further indicated that permits were not required for this work. The effective date of the Notice was December 31, 2019. The Tenant stated that in accordance with the Notice, he moved out mid-December 2019.

The Tenant testified that to his knowledge the Landlord did not do this renovation work but rather re-rented it shortly after he vacated the rental unit. In support he provided a copy of an advertisement placed by the Landlord on May 21, 2020 as well as an email from his neighbour, E.M., who lived in the unit above him, and who confirmed that the unit was re-rented.

In response to the Tenant's claim, S.C. testified as follows. He confirmed he is a property manager for the Landlord company, N.V.P.L. He also confirmed he signed the Notice.

S.C. stated that the Notice was issued because the building was going to be extensively renovated and the first step was to begin removing the asbestos. He claimed that they could not get a building permit for a renovation without first getting the property remediated.

S.C. confirmed that the property was not in fact remediated and that it was eventually re-rented.

In terms of why the Landlord did not proceed with the work contemplated in the Notice, S.C. stated that just over a week after the Notice was served, and on September 9, 2019, the Tenant in this matter, and another tenant in the building went to the weekly Municipal Council meeting and requested that the building be given heritage protection.

S.C. claimed that the building was never going to lose its heritage status, but simply be remediated; however, in response to the tenants' request, a 60-day protection order was placed on the building. Following this, and on September 16, 2019, the Landlord let all the tenants know that a 60-day protection order had been placed on the building and the Tenants were informed that the renovation may not proceed. On September 20, 2019 the Landlord rescinded the Notice to end tenancy and told all the tenants that they would not have to move out.

S.C. stated that he then had ongoing conversations with the tenants to offer them alternate accommodation. On October 2, 2019 the Tenant stated that he would continue looking for accommodation but would stay until he found something.

S.C. confirmed that they also provided a compensation package to all the tenants, including this Tenant as set out in their letter dated September 12, 2019 (a copy of which was provided in evidence before me). This Tenant received $5,350.00 including four months rent and $750.00 moving allowance. The Tenant received these funds by November 8, 2019.

The Landlord's position is that the Notice was rescinded, and that the tenancy ended because they reached a mutual agreement which included compensation to the Tenant.

S.C. stated that at the time the Tenant agreed to this and expressed his view that it was reasonable. He also noted that they gave favourable reference letters for the Tenant and by October 21, 2019 the Tenant informed that he had signed a lease and would be moving out by November 1, 2019, which he did.

S.C. stated that in terms of the ad which was provided in evidence, that was not the subject rental unit. He confirmed that they re-rented the subject rental unit for the exact same rent of $1,150.00 plus the allowable rent increase to $1,180.00 on March 1, 2020.

S.C. confirmed stated that when it became clear the rental building wasn't going to be renovated any time soon due to the issues with the heritage status, they realized they needed to proceed with renting the suites out and mitigating their losses.

In reply, the Tenant stated that he was never told that the eviction was rescinded. He stated that they never received any emails or letters or conversations indicating that the Notice had been rescinded. He also stated that he would never have moved if the eviction was rescinded. The Tenant also noted that the Landlord did not provide any evidence whatsoever to show that they rescinded the eviction notice.

S.C. stated that on October 2, 2019 the Tenant sent an email to the Landlord wherein the Tenant wrote that he understood that the due to the moratorium imposed by the city that they would not have to move out. S.C. submitted that this was an acknowledgement that the Tenant knew that he didn't have to move out.

Analysis

In this case the Landlord issued the Notice pursuant to section 49(6) of the *Act* which provides that 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".

The Tenant seeks monetary compensation pursuant to section 51(2) of the *Act* arguing that the Landlord did not use the rental property for the purpose stated on the Notice. The evidence before me establishes that the rental unit was not extensively renovated, rather it was re-rented within four months of the end of the tenancy.

The Landlord submits that the Notice was withdrawn, and the tenancy ended pursuant to a mutual agreement. The Tenant disputes this.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 11--Amendment and Withdrawal of a Notice to End Tenancy* which provides in part as follows:

> **C. WITHDRAWAL OF NOTICE TO END TENANCY**
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> A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.
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> A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.
>
> A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).
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> **D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY**
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> Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

> Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.
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> For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for "use and occupancy only," it could be implied that the landlord and tenant intend for the tenancy to continue.
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> Intent may also be established by evidence as to:
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> - whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
> - whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
> - the conduct of the parties.
>
> Withdrawal of notice to end tenancy for landlord's use If a landlord and tenant agree to withdraw a notice to end tenancy for landlord use under section 49, the tenant is not entitled to compensation for the notice. The tenant must repay any compensation that was paid as a result of the notice.

In this case I find the Landlord and Tenant agreed to withdraw the Notice. I make this finding for the following reasons. The Tenant was aware of the delay in the development of the rental property as he initiated discussions during the municipal hearings which resulted in a 60-day moratorium being imposed. I find that the Tenant was informed that this delay was such that the Landlord did not proceed with the development. I accept the Landlord's evidence that the Tenant was informed by the Landlord that he did not have to move. Although the Tenant was informed he did not have to move from the rental unit, I find that he agreed to move. In furtherance of this mutual agreement to end the tenancy, the Tenant accepted the sum of $5,350.00 from the Landlord including four months rent and $750.00 moving allowance.

A tenant who receives a notice to end tenancy pursuant to section 49(6) is entitled to one months' rent pursuant to section 51(1). In this case, the tenant received four months rent and a moving allowance from the Landlord. Absent an agreement, the Tenant would have no legal entitlement to these funds. In all the circumstances, I find these funds to be compelling evidence of an oral mutual agreement to end this tenancy.

Even in the event I am incorrect in my finding that the Tenant and Landlord, by their conduct waived the Notice, I find the Tenant is not entitled to compensation pursuant to section 51(2). While it is clear the Landlord did not extensively renovate the rental unit in such a manner as to require vacant possession, I find that the Tenant is not entitled to compensation as I find, pursuant to section 51(3) that the municipal hearings initiated by the Tenant, the delay in the renovation, and the ultimate agreement to end the tenancy on a mutual basis constitute "extenuating circumstances" which prevented the Landlord from taking steps towards accomplishing the stated purpose.

For these reasons I dismiss the Tenant's claim for compensation.

Conclusion

The Tenant's claim for compensation pursuant to section 51(2) is dismissed. As the Tenant has been unsuccessful, his request to recover the filing fee is similarly dismissed.

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: October 22, 2020

Residential Tenancy Branch