



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 the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials and based on the testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began in November, 2019. Monthly rent was \$2,000.00 payable on the first of each month. The landlord issued a 4 Month Notice to End Tenancy for Landlord's Use dated January 29, 2020 on that date. The effective date of the 4 Month Notice is provided as April 30, 2020. The parties did not provide all of the

pages of the 4 Month Notice into evidence but testified that the reason provided for the tenancy to end was that the landlord intended to demolish the rental unit. The tenants moved out in March, 2020.

The tenants submit that since moving they did not observe demolition work being conducted on the rental unit. The parties agree that the rental unit was demolished sometime in or about October, 2020. The landlord said that they required vacant possession of the rental unit prior to obtaining the necessary permits for full demolition of the rental unit. The landlord submits that they performed assessments of the suite beginning in June, 2020, undertook necessary hazard control measures and completed demolition work in or about October, 2020. The tenants now seek a monetary award in the amount of \$24,000.00 pursuant to section 51(2) of the Act submitting that the landlord did not accomplish the stated purpose within a reasonable period after the effective date of the notice.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* provides that a tenant is entitled to a monetary award in an amount equivalent to 12 month's rent 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,

While neither party provided the full 4 Month Notice and only 1 page was submitted into documentary evidence, the parties testified that the reason provided on the notice was that the landlord intends to demolish the rental unit.

The 4 Month Notice dated January 29, 2020 provides an effective date of April 30, 2020. However, as the parties agree that rent for this tenancy was payable on the first of each month, I find that the effective date would have been May 31, 2020 in

accordance with section 49(2)(b) of the *Act* which provides that a landlord may end a tenancy on a date:

- (i) not earlier than 4 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 53(2) provides that an incorrect effective date is automatically changed to the earliest date that complies with the section. Therefore, I find that the effective date of the 4 Month Notice was May 30, 2020.

I accept the undisputed evidence of the parties that the rental unit has been demolished as of October, 2020. The landlord testified that they conducted assessments of the rental unit after they achieved vacant possession and prior to the demolition work being conducted.

Based on the evidence of the parties I find that the stated objective of the notice to end tenancy was achieved in October, 2020, approximately 5 months after the corrected effective date of the notice. I accept the landlord's explanation that they required vacant possession to perform abatement assessments and the work was ongoing from about June, 2020. I find that the landlord took steps in a reasonable period of time for the purposes stated on the notice. I find that a 5 month period is reasonable for major demolition work requiring hazardous material assessment and that the timeline was reasonable given the nature and scope of work. I further accept the landlord's evidence that prior to more visible demolition work, they were taking steps towards their stated goal.

I find, based on the totality of the evidence, that the tenant has not established that the landlord did not accomplish their stated purpose for ending the tenancy within a reasonable period of time. Consequently, I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: November 16, 2020

Residential Tenancy Branch