



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, 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 received the respective materials and based on their 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 sought?

Are the tenants entitled to recover their 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 periodic tenancy originally began in July 2017. The landlords assumed the tenancy when they purchased the property in 2019. The monthly rent was \$1,660.00 payable on the first of each month. The landlord issued a 4 Month Notice to End

Tenancy for Landlord's Use dated January 16, 2020 with an end of tenancy date of May 31, 2020. The reason provided on the notice for the tenancy to end is that the landlord intends to demolish the rental unit. The landlord wrote in the details of the planned work that they intend to "demolish the house after vacancy and build new house in 2020 summer". The tenancy ended in accordance with the 4 Month Notice.

The tenants submit that the landlord did not commence work including obtaining municipal permits until August 2020. The tenants now seek a monetary award in the amount of \$19,920.00, the equivalent of 12 months rent under the tenancy agreement pursuant to section 51(2) of the *Act*. The tenants say that the landlord did not take steps within a reasonable amount of time to accomplish the stated purposes of the Notice.

The landlords submit that they took reasonable steps towards their stated purpose of demolition after the tenancy ended. The landlords say that they arranged for hazardous material assessment in June, 2020, paid a deposit and applied for municipal permits in July 2020 and received a permit in November 2020 for the proposed work. The landlords submit that the demolition of the rental unit commenced on November 5, 2020 and they are now waiting for warmer weather to begin construction of a new building.

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* states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the 4 Month Notice the landlord indicated that the tenancy is ending as the landlords intend to demolish the rental unit. The parties agree that the proposed work has been commenced. The tenants submit that the period from June 1, 2020 to November 5, 2020 when the physical demolition work occurred was unreasonable and gives rise to a monetary award pursuant to the *Act*.

I am unable to agree with the tenants' submissions. I find that the landlord took all reasonable steps to accomplish their stated purposes including commissioning a hazardous material assessment of the rental unit, days after the tenants vacated, applying for municipal permits and paying deposits for the work to be undertaken. I find the timeline of the work to be reasonable under the circumstances. I do not agree with the tenants' belief that they could have remained in the rental for several more months as the nature of the work involved exposing potentially hazardous materials in the materials of the rental unit.

I find that the landlords took steps within a reasonable period of time and there is no basis for a monetary award in the tenants' favour. Consequently, I dismiss the tenants' application without leave to reapply.

Conclusion too

The tenants' 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: February 23, 2021

Residential Tenancy Branch