Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodbridge Properties and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenants filed an application for Dispute Resolution (the "Application") on July 21, 2020 seeking a monetary order for loss or compensation. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of hearings on January 29, 2021 and February 23, 2021 pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenants and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. The initial hearing in this matter was on November 10, 2020. In that hearing, the landlord revealed they only received prepared materials from the tenants very recently, without the opportunity to fully review. I adjourned the matter to allow the landlord the proper amount of time to review.

The reconvened hearing in this matter was on January 29, 2021. In this hearing, both parties confirmed they received the prepared evidence package of the other.

In the reconvened hearing, the allotted hearing time was one hour. This allowed the tenants time to make their submissions, with reference to materials throughout. The scheduled hearing time was completed before the landlord presented their submissions and response to those of the tenants. Because of this, I adjourned the matter further to February 23, 2021, to give the landlord scheduled time to make their submissions. In the interim, I closed the matter from further submissions, meaning both parties were not allowed to submit more documentary evidence.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage or compensation pursuant to s. 67 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenants resided in the rental unit since 1999. They signed a tenancy agreement with this landlord on July 26, 2016. This was for a fixed term ending on July 27, 2017 and after this time the agreement continued on a month-to-month basis. A copy of this agreement is in the evidence. They paid $1,000 per month rent, through to the end of their tenancy on October 1, 2018.

On their Application, the tenants claim for monetary compensation in the amount of $15,000. This is for harassment due to “multiple eviction notices in bad faith”. They also added “loss of enjoyment of property.” Their prepared Monetary Worksheet dated October 21, 2020 provides the total amount of $14,092.21. This includes amounts for moving expenses, and costs for registered mail.

The largest portion of the claim -- $13,000 – is shown as the $1,000 rent amount for each month from August 2017 through to August 2018. In the hearing, the tenants advocate stated they counted each month from November 2017 when they were served with a Notice to End Tenancy. They counted up the number of months and referred to the copies of rent cheques that they provided in their evidence.

With the tenancy ending October 1, 2018, the tenants advocate clarified that the amount of claim should reflect the monthly amounts from November 2017 up to and including September 2018. In the hearing, they confirmed this amount of claim to be $11,000, with the timeframe involved being 11 months. With this amendment to the amount, the revised total for the tenants’ claim is $12,092.21.

The tenants' advocate provided a comprehensive history of the tenancy. Upon purchase of the rental unit by the landlord here, they had a new tenancy agreement in 2016 with the tenants. The tenants describe this as an "imposed rent increase" to $1,000 per month which is a 5.2% increase, almost double what a legal rent increase could be.

The first Notice to End Tenancy ("Notice #1") for demolition - was served on November 8, 2017, this gave the tenants until February 28, 2018. With this Notice #1 the landlord offered a 4-month timeframe which they asserted was 2 months more than necessary – this with the 4th month rent-free. The tenants applied to cancel Notice #1 – after the application an agent for the landlord contacted the tenants' advocate to inquire on how to evict the tenants in order to obtain the proper permit – a survey in order to assess hazardous materials was necessary to obtain a permit and the survey could not be conducted with the tenants in the unit. That agent for the landlord also stated they would then try to evict under the legislative provision of 'landlord's use of property'.

The landlord then served a second Notice to End Tenancy ("Notice #2") for the Landlord's Use of Property on November 22, 2017 – giving the tenants until January 31, 2018 to move out. In the tenants' submission, this is essentially where the landlord "retaliated" by taking away one month from the original Notice #1. The tenants' advocate contacted the municipality who informed them there were no permits issued for the rental unit address – the water course permit was not issued until April 2018. This time period 2017 – 2018 was a time of housing crisis – the tenants were "doing what they needed to do" to find new housing.

On January 25, 2018 an Arbitrator cancelled both Notice #1 and Notice #2. For Notice #1 the landlord's position on asbestos or lead removal was not tenable, and the Arbitrator found this should not prevent their obtaining of the necessary permits. They found the landlord issued Notice #2 in bad faith.

After this decision, the landlord issued the third Notice to End Tenancy for demolition ("Notice #3") on January 31 giving the tenancy end date of March 31, 2018. This was without the necessary permits and in the letter accompanying Notice #3 the landlord reiterated their position that the unit must be vacant in order to obtain the necessary permit. In the accompanying letter, the landlord stated: "It is unfortunate during our last dispute that the Arbitrator did not seem to fully understand how this process works, or the reason why this clause is not applicable in this circumstance."

The landlord followed this with a notice to the tenants that pest control would make a visit to their rental unit. By February 21 the landlord retained the services of a hazmat removal and demolition contractor.

The second arbitration in this matter was on March 14, 2018. Here the Arbitrator found the landlord did not have all necessary permits and approvals required by law; therefore, the landlord did not have the right to end the tenancy. Further in this decision, the Arbitrator ordered the landlord "not to serve another Two Month Notice . . . until the landlord has all the permits and approvals. . ."

The landlord served another Notice to End Tenancy ("Notice #4") on March 27, 2018, for the vacancy date of May 31, 2018. At the scheduled arbitration to cancel this Notice, the landlord did not attend; therefore, this notice was cancelled.

On April 12, 2018 the tenants' advocate discovered via the municipality that the watercourse permit was not yet issued.

Both parties submitted a copy of an "Impact Statement" from the tenants dated April 15, 2018. This describes their reliance on extra medication "to cope with the stress of [their] housing crisis and to deal with the harassment from the developer." Each of the eviction notices they received arrived just before a major holiday. Their overall concern at the time of this statement was not having a place to live. They also provided that "I never know what to expect in my mailbox when I get home from work." The six-month period at this point led to a deterioration of health, and extra medication to cope with stress, with constant headaches.

Further, the tenants set out their difficulty with finding suitable housing, being "very actively seeking somewhere else to live."

A representative of the landlord called the tenants directly and arranged to meet the tenants personally. The tenants' understanding was that this was to discuss some agreement. On May 31, 2018 the landlord's representative attended at the rental unit with the tenants and their advocate. The tenants provided a sound recording of this meeting; in the tenants' submission, this is evidence that points to the entire situation being "too stressful to continue like this."

In this hearing, the tenants' advocate provided that the representative was under the impression that the tenants had sold to the landlord. At that meeting, they then issued another Two Month Notice to End Tenancy ("Notice #5) dated May 31, 2018 for the ending date July 31, 2018. The tenants' advocate informed the representative that the law changed at that time, and the issue was then properly covered by a Four-Month Notice to End Tenancy. In the recording of this meeting provided for this hearing, the meeting ends abruptly, with the representative stating the tenants were ganging up on them. According to the tenants, that

representative stated the law does not apply and that the tenants just need to leave because the landlords need to build this housing.

The following day, the landlord issued a Four-Month Notice ("Notice #6") on June 1, 2018. This gave the final move-out date of October 1, 2018. After this, the tenants' advocate followed up with the municipality; by June 19, 2018 the landlord still had not obtained the demolition permit.

The tenants chose to end the tenancy on October 1, 2018. They incurred move-out costs at that time, with the actual process of moving carried out from September 8 through to October 1, 2018.

The tenants provided a Monetary Order Worksheet for this hearing, dated October 21, 2020. The separate categories of their claim break down as follows:

#	for	$ total
1	hearing preparation	89.67
2	rent	11,000.00
3	moving expenses	1,002.54
	TOTAL	**12,092.21**

For item 1, the tenants provided receipts for registered mail for the separate correspondence sent to the landlord from November 2017 through to July 2020. These are seven separate registered mail receipts. Additionally, there is the cost of a zip drive for the purpose of sending the sound recording of the May 31, 2018 meeting with the landlord agent.

Item 2 is the largest portion of the claim. This is the $1,000 rent amount for each month from November 2017 through to September 2018.

For item 3, the tenants provided receipts from a moving company dated September 14, 2018. There was moving equipment rental on September 8 and October 1 to October 3. The tenants also obtained moving materials on August 9, 2018.

The landlord provided a formal response setting out their position on January 15, 2021. In this document, the landlord set out the history of this tenancy agreement. This purchase and sale had a "rent back" agreement, with $1,000 per month. The landlord terms this as "approximately half the homes rental value per month." This was provided to the owner/tenants with the understanding that when the townhome project was ready to proceed, the "tenant would vacate the property within a reasonable period of time post notice." In the

hearing, the landlord reiterated that the tenants here were aware of all the project work, and aware of the rental unit purchase by the developer/landlord.

The landlord presented they made several concessions to the tenants here, all in good faith. To start, the rent was $1,000 per month. They also presented that the fact no other properties sold for redevelopment had tenants or residents that raised issues – this shows their communication was forthright and "all in the interests of mutual respect and proper business functioning." Further, there was never any indication of dissatisfaction expressed by the tenants here until they chose to challenge Notice #1. This "came as a surprise" to the landlord and they inquired why the tenants took this action.

After this, the landlord served Notice #2. In the landlord's response, this was "with the intention to supersede the first notice and its related dispute action."

The landlord also presented the conundrum they faced with the need for proof in the form of a demolition or building permit. The municipality bylaw did not allow for a permit to be issued until the unit was remediated, and this was not possible until the home was unoccupied. Based on the experience with other units in the immediate area, the landlord presented there was probably cause for asbestos, further underlining the need for vacancy because the necessary remediation work could not commence because of this hazard. They present that neither the tenants nor the Arbitrator from the January 2018 hearing "seemed to understand or be swayed by [this] information."

The landlord then states: "Due to the regrettable outcome of the dispute resolution hearing and cancellation of the first two eviction notices, [the landlord] served a third notice to end tenancy on January 31, 2018 . . ." They reiterated in an attached letter to the tenants that "it was not possible to receive the demo permit without completing the hazmat removal." This was also "causing . . . substantial financial damages" from the delay brought on by the tenants' refusal to leave.

The landlord described how they inquired to the tenants on their progress finding a new living arrangement. They were in contact with a separate property manager and gave a recommendation for the tenants here. This reveals their "positive intentions towards the tenants." With the slated end-of-tenancy date approaching at the end of March, and no progress from the tenants, they were "compelled to serve [Notice #4] to supersede that previously issued."

Drawing on their receipt of the tenants' April 15, 2018 message (re: being harassed) they reiterated it was their understanding that the tenants would act in good faith and vacate within

a reasonable amount of time upon receiving notice. Notice #5 was followed by Notice #6 when the landlord discovered that "RTB transitioned from a 2-month notice to a 4-month notice to end tenancy requirement."

In their submission, the landlord summarizes as follows:

> The tenant is alleging harassment and bad faith, where none exists. The atypical series of notices to end tenancy was a product of changing rules at the RTB, to which [the landlord] was reacting AND most importantly, the tenants ongoing strategy to avoid receipt of notice to vacate the premises.

Further:

> [The landlord] always operated in a business-like manner while navigating the changing rules of the RTB and the new RTB rule's lack of coordination with the [municipality] requirements for receipt of demolition permits.

After hearing the landlord's submissions, the tenants summarized their position in the hearing to say they were doing everything possible for people of their age, with the only intention being to keep a home. With this, they followed the process of the law to challenge the validity of each end-of-tenancy notice, trying to keep their home until there was another space to go to. They had "no malicious intent", contrary to what was suggested by the landlord in their submissions. They reiterated their position on harassment, equating the landlord's statements with those saying they were "not good tenants". They posit there was no discussion with the tenants about their situation and where they were at.

The landlord closed their statements in the hearing by saying it was absurd to suggest the landlord's actions here are those of harassment.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The start of my analysis focuses on the harassment claim brought forward by the tenants. The most prevalent piece that provides insight into the impact of this alleged behaviour is that of the April 15, 2018 letter of the tenants. In this letter the tenants state they are having health issues and increasing reliance on medication. While this doesn't tie directly to a claim of harassment, this is the only statement the tenants provide in terms of the tangible impact the actions of the landlord are having on their lives.

Respectfully, this is not a measurable impact, and the tenants did not provide supplementary evidence to show health issues that are more definitive. The hearing was the opportunity for the tenants to provide evidence of the impact of more serious actions of the landlord; however, there is not sufficient evidence to show the matters are having health effects which would be the most serious ill-effect attributable to actions of the landlord.

I consider harassment to be something that is humiliating or violating the dignity of an individual. It is tenable that this could have measurable impacts to health or mental well-being.

The landlord expressed misgivings about the tenants' intentions; however, I find this did not veer into conduct or statements that targeted the personalities or personal life circumstances of the tenants. There is no evidence of that here. I find the communication was pointed;

however, it was not a constant barrage of messages, nor was there any expression of ill-will or use of demeaning language.

In their letter the tenants pointed to a pattern of eviction notices being delivered “just before a major holiday like Christmas or Easter to make sure we do not enjoy any family time.” Respectfully, on my review of dates and holidays for 2017 and 2018 I do not see this pattern present. Though frequent and causing concern, I find the timing of their issuance does not equate to spiteful actions by the landlord.

This includes the submissions right up to the present for this hearing which the tenants submitted continues the cycle of harassment. While the language therein points to the tenants as the source of the problem, again I find the language is not disrespectful to a degree that would constitute harassment.

For these reasons, I grant no portion of a monetary award under the rubric of harassment.

The *Act* s. 28 provides for the protection of a tenant’s right to quiet enjoyment. This includes “freedom from unreasonable disturbance.” With this statutory basis, I consider the actions of the landlord in terms of an amount by which the value of the tenancy was reduced. This is with regard to the seriousness of the situation, and a consideration of the age of the tenants, the imposition itself, and the length of time over which this situation existed.

I accept that notices to end the tenancy, imposing a looming timeframe in which a degree of certainty in a person’s life can be upended, constitute a disturbance. This is exacerbated where the notices repeat for ostensibly the same reason. Here there were 6 notices issued in total, with two periods in which notices were issued consecutively, within two weeks of one another. This is November 2017, and May-June 2018. I find the number of notices in total equates to a disturbance. Where this becomes “unreasonable” is in the frequent periods of intensity, posing significant challenges to the resources of the tenants and their immediate heightened concern for finding accommodation.

I also consider the age and life circumstances of the tenants. As of 2018 both tenants here were in their 70s. This factors into the means available to the tenants to adjust. I find these notices served to shift priorities significantly for the tenants, thereby affecting their quiet enjoyment. While it is not known what resources the tenants had available, the notices became burdensome. I accept the looming project surrounded the dwelling of the tenants. This created the necessity for the tenants to adjust and move; however, the mode of communication and imposition engendered by the notices consecutively issued, impacted their quiet enjoyment.

Within the initial three-month timeframe, the tenants were of the clear understanding that the notices being issued in this fashion (that is, without required permits) were “illegal”. From that point on, I find the disturbance shifted for the tenants, from one of uncertainty and possible despair, to one of having to repeatedly address the legality of the situation.

I find it was the landlord’s choice to make their intentions known to the tenants by issuing notices. This is beyond other forms of communication and not offset by the amount of rent being paid by the tenants during that time. For the two periods of intensity, I find the tenancy was disturbed to an unreasonable degree. Additionally, the disturbance carried over into the period immediately following the first dispute resolution process, where the landlord followed with another notice issued in very short order. Similarly, in March 2018, the Arbitrator’s decision was followed in short order by another notice on March 27, 2018.

For these reasons, I award the tenants one full-month rent for each of these periods: November 2017 and January, March, and May-June 2018. For November January and March, these are one-month periods in which the tenants were subject to unreasonable disturbance by the landlord. This timeline is condensed for the end-of-May and start-of June timeframe. I award the total amount here of $4,000.

The tenants here submitted that the landlord issued “multiple eviction notices in bad faith” as stated on their Application. A common definition derived from case law has it that good faith requires a party’s honest intention with no ulterior motive.[1]

I find there is no question that the landlord intended to accomplish the stated action for the issuance of each of the notices; however, that is not the question in relation to the concept of ‘good faith’ that I address here. Rather, I find the question is whether the landlord continued to issue notices in order to avoid their obligations under the *Act*. In January 2018, the Arbitrator found that the landlord issuing a second notice was with the intention to “punish the Tenants for exercising a lawful right.” This equates to bad faith. My focus, then, is on subsequent notices and whether I can award an amount commensurate with any violation of the *Act*.

Was there a pattern here? After the January 25, 2018 Arbitrator finding, the landlord issued Notice #3. This was accompanied by a letter in which the landlord stated the Arbitrator did not understand the process. I also find the landlord’s statement amounts to them telling the tenants why s. 49(6) does not apply. I conclude that this Notice #3 was issued in spite of what the *Act* dictates. The Arbitrator encouraged the parties to work together to find “a mutually

[1] *Gichiru* v. *Palmar Properties Ltd.* 2011 BCSC 827

acceptable means and a reasonable time for the tenancy to end." There is no evidence to show the landlord pursued an avenue of dialogue where the law did not allow for issuance of the notice in this way; instead, they issued Notice #3.

After the next March 14, 2018 Arbitrator decision, the landlord issued Notice #4. Nothing changed in the circumstances of obtaining another permit within this time. The Arbitrator was firm in barring this action: "I hereby Order the landlord not to serve another Two Month Notice . . .until the landlord has all the permits and approvals needed . . . with the exception of the certificate that shows all hazardous materials have been removed from the rental unit." Despite this concession on the hazardous materials, the landlord ignored the Order of the Arbitrator and for the second time proceeded in spite of the s. 49(6) requirement.

The landlord issued Notice #5 in a joint meeting with the tenants fraught with tension. This meeting was just over 3 minutes in duration as heard in the recording submitted by the tenants here. What I do understand from the first portion of the recording is that the agent for the landlord in attendance was of the understanding that the tenants were the individuals who sold the property. When they discovered otherwise, they issued Notice #5. Further, the agent was not aware of the recent change in the law on May 17 in which the only legal avenue for demolition became a four-month notice.

I also find this subsequent Notice #5 was issued in response to the Arbitrator ruling of May 8, 2018, that which cancelled Notice #4 due to the landlord not attending the hearing and not establishing by the burden of proof that Notice #4 was valid. Additionally, in the meeting the landlord's agent was not aware of the recent change in law that requires a Four-Month Notice. I appreciate the meeting was tense and the agent here reacted under pressure; however, despite information from the tenants that the law had changed, they still issued Notice #5.

From this meeting I conclude the landlord here was not treating the relationship as that of landlord and tenant. I find each of the notices issued – that is, Notices #3 through #6 – were issued without due regard for the law. This despite two Arbitrators instructing otherwise, with one of them encouraging dialogue for a mutually acceptable solution.

Ostensibly, the goal of the landlord was to end the tenancy in order to proceed on remediation and work on obtaining the necessary permits. There was room for dialogue on this to find a solution; however, there is no evidence that the landlord examined that option. I find this was a difficult process for the landlord, with the situation landing as it did between the provisions of the *Act*, and the conflicting bylaws of the municipality. Instead of engaging the tenants in this process, the landlord chose to continue issuing notices. This leaves it difficult to see the

landlord's honest intention when there is no compromise or collaboration in this tenuous situation.

There are two other facets to my consideration here. One is the landlord's effort at establishing a suitable alternate rental unit for the tenants. They contacted the tenants on March 22, 2018 to inquire on their search for a new home. They contacted a property manager and gave a recommendation for a new unit for the tenants. There is no follow-up to this information in the evidence, and the tenants did not indicate whether they replied.

This email inquiry from the landlord appeared in the tenants' evidence. It does present the landlord inquiring on the tenants' home search; however, it also contains the landlord's choice wording: "if [the tenants] have found a new place that would save [the landlord] from having to issue a new 2-month notice to end tenancy." I find the landlord presented this to demonstrate a gesture of good faith; however, it is not revealing of a dialogue based on collaboration. It is laced with repercussion.

Secondly, as an adjunct to this, there was no response from the tenants. Surely by this point they were instructed to not open any dialogue with the landlord. I understand this is a method of being risk-averse and exercising the legal right to challenge the eviction, yet there is the component of mitigation. I find the tenants also had the means available to them to open the dialogue to explore other options such as short-term vacancy to enable hazardous material processing. There is no record that these discussions ever happened, and this would involve the tenants taking ownership. At the same time, I acknowledge that each successive notice entrenched the tenants in their position to assert their legal rights. For this, the landlord bears the responsibility for the communication breakdown, by continuing to wield authority by issuing notices. This was omitting other options at collaboration or negotiation.

From all this I find the landlord continued a pattern, to the extent that I find a monetary award is appropriate. The honest intention of the landlord was obscured by repeated notices.

It was the landlord who provided information on how the tenancy ended. This was started with the tenants' notice to the landlord on June 25, 2018, giving the last day in the unit as October 31, 2018. Two months later, on August 27, 2018 the tenants advised their final date would be October 1, 2018.

I award half of each months' rent for those remaining calendar months that do not receive the full rent coverage. This includes only the months in which the tenants were still in a tenuous position with respect to the impending end of tenancy. I find that by late June the tenants had their own plans in place; therefore, the pressure from the landlord abated at that time. From

the total number of months claimed, I isolate December 2017 and February and April 2018. These are the months in which the tenants lived in a state of uncertainty, responding to repeated notices, and not knowing what future Arbitration decisions would bring. Additionally, these months are not covered by the full month rent awards granted above. These three months shall have one-half rent amount to the tenants as an award. This is a total of $1,500.

The tenants claim for moving expenses. In total this is $1,002.54, for which they provided receipts. These receipts show moving activities commencing in August 2018, then through to October 3, 2018.

Despite the repeated pattern of notices from the landlord, this choice of ending the tenancy at this time was that of the tenants. Additionally, I find the final date was shifted forward one month and this is not an insignificant amount of time. The tenants were still aware that proper permits were not in place, as shown in their emails to the municipality of June 11 and June 19, 2018.

This move out was the tenants' own choice, and by June this was not hastened by the last notice issued by the landlord. The tenants moved over the months of August and September. I find this was their own undertaking and is not a cost that is borne by the landlord here. For this portion of the claim, I grant no award.

I award compensation for the registered mail costs and zip drive. I find this represents a monetary loss in essence stemming from the tenants' challenge of the validity of successive notices issued by the landlord. This includes expenses right up to the time of their Application for this hearing. This award amount is $89.67.

Because the tenants were successful in their claim for compensation, I here award them reimbursement of the Application filing fee. This added award portion is $100.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of $5,689.67. The tenants are provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Act*.

Dated: March 23, 2021