Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chase Valley Investment Corp., Chase Valley Developments and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The tenants, an agent for the landlord (the "agent") and the president of the landlord company (the "president") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties testified to the e-mail addresses for service of this decision/order.

Preliminary Issue- Service of Documents

Both parties agreed that the landlord was served with the tenants' application for dispute resolution and first evidence package via registered mail in December of 2020. I find that the tenants' application for dispute resolution and first evidence package were served on the landlord in accordance with section 89 and 88 of the *Act*.

Both parties agree that the tenants personally served the landlord with their second evidence package on April 21, 2021, the day before this hearing. The landlord's agent testified that the landlord did not have time to review and respond to the tenants' second evidence package.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondent at least 14 days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the agent testified that the landlord did not have time to review and respond to the evidence contained in the tenants' second evidence package. I find that the landlord was not provided with enough time to review the evidence, be informed of the case against it and to reply to those claims. I therefore exclude the tenants' second evidence package from consideration.

The agent testified that the tenants were served with the landlord's evidence via email and registered mail on April 6, 2020. The Canada Post tracking number was entered into evidence. The Canada Post website states that the landlord's evidence was mailed on April 6, 2020 and was returned to sender as the address was incomplete. The landlord's agent testified that the address they used to serve the registered mail is the address for service provided on the tenants' application for dispute resolution. The tenants testified that their address for service on this application for dispute resolution was incomplete and lacked a PO box number. The tenants testified that they only noticed the e-mailed evidence on April 19, 2020.

I find that the landlord was entitled to rely on the address for service provided by the tenants on the application for dispute resolution. I find that it was the tenants' responsibility to provide the correct complete address which they failed to do. I find that the landlord served the tenants in accordance with section 89 of the *Act*. I accept the landlord's evidence for consideration. I amend the tenants' application to state their full address for service, pursuant to section 64 of the *Act.*

Preliminary Issue- Amendment

The president testified that the tenants listed the incorrect legal name of the landlord company on this application for dispute resolution. The president testified to the correct legal name of the company landlord and confirmed that the name presented was a legal entity not a doing business as name. The tenants did not object to amending the name of the landlord on this application to state the correct legal name of the landlord company. Pursuant to section 64 of the *Act*, I amend the tenants' application for dispute resolution to state the correct legal name of the landlord company.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2012 and ended on March 6, 2019. Monthly rent in the amount of $1,040.00 was payable on the first day of each month. A security deposit of $500.00 and a pet damage deposit of $500.00 (the "deposits") were paid by the tenants to the landlord. The deposits were applied to the last months' rent.

Both parties agree that the landlord personally served the tenants with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rent Unit (the "Notice") on September 25, 2018. The Notice is dated September 25, 2018 and states that the tenants must move out of the rental unit by January 31, 2019. The Notice states that the landlord is ending the tenancy because the landlord is going to demolish the rental unit. Both parties agree that the tenants requested extra time to find alternate accomodation and the landlords acquiesced, which resulted in a move out date of March 6, 2019.

Both parties agree that the subject rental property has not been demolished. The tenants testified that when they moved out of the subject rental property, their new accomodation had a higher rental rate of $1,850.00 per month. The tenants testified that since the landlord did not demolish the rental unit as stated in the Notice, they are entitled to recover 12 months rent at the rental rate of their subsequent rental home. The tenants are claiming $22,200.00.

The president testified that the landlord had full intentions of demolishing the subject rental property when the Notice was served on the tenants, but due to circumstances outside of their control, the demolition was delayed.

The president testified that the City in question provided the landlord with an “open letter” which stated that the City would grant the landlord a permit for demolishing the subject rental property if certain conditions were met including obtaining a hazardous materials report. The “open letter” was not entered into evidence. The landlord’s application for a demolition building permit was entered into evidence, but no building permit was entered into evidence.

The president testified that after the tenants moved out a hazardous material report was conducted at the subject rental property on March 19, 2019 and a report was created on March 26, 2019. The hazardous material assessment report was entered into evidence. The president testified that the hazardous material assessment report found hazardous materials at the subject rental site which increased the cost of demolishing the subject rental property from approximately $20,000.00 to approximately $100,000.00. No proof of this cost increase was entered into evidence. The hazardous material assessment report states that hazardous materials including asbestos were found at the subject rental property.

The president testified that the hazardous material assessment involves taking samples throughout the house, including samples of paint and drywall. The president testified that holes had to be drilled in the walls every 18-24 inches.

The president testified that a stop work order was placed on the subject rental property on February 22, 2019 because the landlord was removing soil without a soil removal permit. The president testified that this was an oversight.

The president testified that the landlord recently sold the subject rental property which will be demolished to allow for increased density housing to be constructed.

The tenants testified that no attempt to inspect the subject rental property for hazardous material were made while the tenants resided in the subject rental property.

Analysis

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), 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.

Section 51(3) of the *Act* states that 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.

As both parties agree that the subject rental property has not been demolished over two years after the end of this tenancy, I find that the rental unit was not used for the stated purpose of demolition for more than a 6 month duration, beginning within a reasonable period after the effective date of the notice, contrary to section 51(2)(b) of the *Act.*

Pursuant to section 51(2) of the *Act*, the tenants are entitled to an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, unless the landlords prove that extenuating circumstances prevented the landlord from 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.

I note that the 12 months' rent referenced in section 51(2) of the *Act* refers to the rent payable under the tenancy agreement between the parties to this application, not to rent payable under the tenants' subsequent tenancy agreement.

Residential Tenancy Guideline #50 states in part:

> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
>
> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
> - A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
> - A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.
>
> The following are probably not extenuating circumstances:
>
> - A landlord ends a tenancy to occupy a rental unit and they change their mind.
> - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

I find that the potential presence of asbestos and other hazardous materials should have been contemplated as a possibility before the tenants were served with the Notice. By the landlord's testimony, the landlord was aware at the time the Notice was served on the tenant that a demolition permit would not be issued without the completion of the Hazardous Materials Assessment and that hazardous material may be found. It is not a difficult leap of reasoning that if hazardous materials were found, the cost of demolition may increase. I find that the landlord failed to budget for these contingencies.

I note that the landlord did not complete the Hazardous Materials Assessment prior to service of the Notice on the tenants. While the Hazardous Materials Assessment caused some level of damage to the property, none of the testimony provided by the president suggested that it could not have been conducted during the tenancy with the cooperation of the tenants.

I find that the landlord did not have all the required permits in place at the time the Notice was served on the tenants and that the failure of the landlord to properly budget for the demolition is akin to a landlord failing to adequately budget for renovations, which the policy guideline states is probably not an extenuating circumstances. I find that the landlord has not proved, on a balance of probabilities, that extenuating circumstances prevented the landlord from 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.

Pursuant to section 51(2) of the *Act*, I award the tenants 12 months' rent in the amount of $12,480.00.

Conclusion

I issue a Monetary Order to the tenants in the amount of $12,480.00.

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 landlord 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 *Residential Tenancy Act*.

Dated: April 23, 2021

Residential Tenancy Branch