



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$34,300.00, for 12 months' compensation due to an allegation that the landlord failed to comply with the reason stated on the 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated September 26, 2019 (4 Month Notice), for double the return of the security deposit, and for compensation related to rats in walls, crawlspace and attic, plus the filing fee.

The tenant, the landlord and counsel for the landlord, RG (counsel) attended the teleconference hearing. The landlord and tenant were affirmed, and counsel has already sworn an oath. The hearing process was explained, and the parties were given an opportunity to ask questions during the hearing. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing began on May 20, 2021 and after 28 minutes the hearing was adjourned for the purposes of the tenant to reserve 11 pages of evidence by the deadline specified in the Interim Decision dated May 21, 2021, which should be read in conjunction with this decision.

On September 20, 2021, the hearing continued, and the parties confirmed that the documents were served and no issues regarding the ability to review those documents were raised. Given the above, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the monetary claim related to 12 months' compensation in relation to the 4 Month Notice. I find the security deposit and other monetary compensation are not related to the 4 Month Notice. I will, therefore, only consider the tenant's claim for 12 months' compensation related to the 4 Month Notice, and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, **with leave to re-apply**.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent under the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2017 and reverted to a month-to-month tenancy after November 1, 2018. Monthly rent during the tenancy was \$2,500.00 per month.

The tenant confirmed they were served with the 4 Month Notice and did not file an application to dispute the 4 Month Notice. The effective vacancy date listed on the 4 Month Notice was January 31, 2020. The tenant claims they vacated the rental unit on February 1, 2020, while the landlord and counsel submit that the tenant did not vacate the rental unit until February 15, 2020.

The reason stated on the 4 Month Notice is:

I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant.

- 4 months the unit is required to be vacant.

Although the landlord did not indicate whether or not permits and approvals were required by law to do this work, the landlord wrote the following regarding the work planned as follows:

Planned Work:

BACKYARD FENCING

NEW KITCHEN

INVESTIGATIVE STRUCTURAL AND ROOF

Details of Work:

HOPE TO HAVE ALL TRADES ON SITE AT ONCE. -HEAVY MACHINERY

LUMBER DELIVERIES COMPLETE KITCHEN CUPBOARDS OUT. ETC.

[Reproduced as written]

The tenant is seeking compensation in the amount of 12 months of rent due to the landlord failing to comply with the reason stated on the 4 Month Notice.

Landlord's Evidence

Counsel submits that after the tenant vacated on February 15, 2020, the rental unit was cleaned to get ready for the work being planned. By March 2020, counsel submits that due to COVID-19 (the pandemic) that the entire project resulted in unforeseeable delays. Counsel also submits that the landlord took reasonable steps to undergo the planned renovation by arranging and paying for a designer, which the emails submitted in evidence support. The first email is dated March 2, 2020, and the landlord had been in regular communication with Mr. H, the landlord's designer (designer).

In addition, counsel submits that the entire project ended up being far more major due to the need for tree protection, stream protection and a new septic tank system. Counsel submits that due to the pandemic the landlord couldn't bring people to the property or find labourers and even as the last portion of the hearing, September 20, 2021, it is a real problem to find labourers due to a labour shortage.

Counsel submits that the design discussions with Mr. H last until mid-April 2020 and that between the septic quote of July 2020 and September 2020 there was a delay in the site surveyors and final designs for permit purposes that were beyond the control of the landlord. By September 2020, counsel states that the building permits changed to preparations for a demolition permit as it made more sense ultimately given the final cost similarities to start an entirely new home versus renovating the existing home, which was planned. The demolition permit was not granted until February 2021.

Counsel presented the following invoices, quotes and/or permits which are listed below in no particular order:

1. Surveyor/engineer invoice dated June 25, 2020 for \$3,675.00
2. Architect drawing/proposed residential development dated September 2, 2020
3. Energuide application and compliance report dated September 8, 2020 for \$787.50
4. Engineering and structural review dated September 23, 2020 for \$2,362.50
5. Work order for printing of drawings dated September 28, 2020 for \$429.00
6. Architect services from both September 30, 2020 and October 31, 2020 for \$6,313.26 (including partial payment of \$1,575.00)
7. Building Permit application dated October 20, 2020 for demolition of single family dwelling
8. New home Registration payment of \$40.00 dated October 2, 2020
9. Invoice from development company dated October 7, 2020 for \$5,370.20
10. Land Title and Survey Authority receipt of \$12.77 dated November 16, 2020

11. Septic tank quote for \$22,795.00 dated in July 2020
12. Septic site assessment, planning and design of sewage system for \$2,100.00 dated November 26, 2020
13. Scientific consulting/engineering quote for \$3,240.73 dated February 8, 2021

Counsel stated that once the demolition finally took place starting in February 2021, that eventually a building permit for the new home on the property was issued in April 2021. Counsel stated that while there was “feature creep”, between March 2020 and the fall of 2020, and based on the information from the designer and the architect, the recommendation ultimately was to demolish the home versus renovating it due to the limitations with renovating the home, while considering the tree and stream issues that arose during the project. In summary the point was made that if they were going to spend a fortune anyways, it just made more sense to demolish and build new versus renovating and not getting everything the landlord wanted after consulting with their designer and architect.

The landlord stated that while most delays were related to the pandemic and continue to be delayed as the home is still not complete as of the date of the final portion of the hearing, September 20, 2021, that the landlord had to address issues with drainage, culverts, while ensuring there was no pollution to the stream or damage to any trees. The landlord affirmed that they have acted reasonably since the tenant vacated and that it was not until the fall of 2020 that the renovation project was changed to a demolition/new build project.

Counsel stated that due to the four waves of the pandemic, that the landlord has taken reasonable steps but that the delays in having people attend the property has been out of their control and that scope creep, labour issues, the pandemic and delays by the local building authorities have led to the where the landlord is today with the project.

Tenant's Evidence

The tenant stated that they were evicted for renovation purposes and it seems that what the landlord is saying is that they suffered delays in building a new house. The tenant stated that the home has sat vacant for month and months. The tenant attempted to argue about permits not being issued prior to the 4 Month Notice being served however both parties were advised that the tenant did not apply to dispute the 4 Month Notice so raising the issue of good faith after the fact is not relevant. The only issue for me to determine is if the landlord made reasonable attempts to comply with the reason stated on the 4 Month Notice and if not, has the landlord provided sufficient evidence to

support that extenuating circumstances existed that prevented the landlord from complying with the stated purpose within a reasonable time after the effective vacancy date of the 4 Month Notice and for at least 6 months in duration.

The tenant was not sure how the septic system issues were relevant as the tenant stated that they did not have any issues with the septic system during the tenancy. The tenant also stated that this is a “classic renoviction scenario.” The tenant also asked where the reports were for the roof, structure or foundation.

Response from Landlord and Counsel

Counsel submits that the landlord did not know what the entire scope was at the time the 4 Month Notice was issued and is why the investigative work was listed on the 4 Month Notice. The landlord stated that while it was never their intention to build a new home and the plan was to renovate their home, it was only after the reports from the designer, architect, site surveyors and engineers that were retained, that it was determined that demolition and building a new home made more sense then renovating. The landlord also stated that being advised that they were not permitted to build a cottage on the property after the renovation was complete also contributed to the decision of taking down their home and building a new home, which is not yet completed.

Analysis

Based on the documentary evidence, the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 51(2) of the Act states:

51(2) 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 the landlord or purchaser, as applicable, does not establish that**

(a)**the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and**

(b)**the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration,**

beginning within a reasonable period after the effective date of the notice.

[Emphasis added]

In addition, section 51(3) of the Act, which came into force on May 17, 2018 and was in effect prior to the 4 Month Notice being issued, states:

51(3) 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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[Emphasis added]

I have considered all of the evidence presented and I find that the landlord and counsel have provided sufficient evidence that extenuating circumstances prevented the landlord from complying with the reason stated on the 4 Month Notice, which was a renovation. I find the landlord and counsel have provided compelling evidence that due to the following, the renovation plans were changed from a renovation project to a demolition/new build project:

1. The current pandemic began approximately one month after the effective vacancy date listed on the 4 Month Notice and continues with its fourth wave as of the time this decision was written.
2. For the first few months after the effective vacancy date, the landlord has provided sufficient evidence that a renovation design was being prepared and planned.
3. That by the fall of 2020, due to all of the information obtained from the professionals retained by the landlord including but not limited to the designer, architect, engineers, site surveyors, and resulting stream and tree protection issues, that as of February 2021, **which is over 1 year after the effective vacancy date of the 4 Month Notice**, a demolition permit was issued and two

months later after the demolition permit was issue, a building permit was issued for the new build in April 2021.

I find the landlord could not have reasonably foreseen a pandemic and could not have reasonably foreseen the impacts of a long-term pandemic, which has lasted since March 2020 and continues into the fourth wave and has not yet ended as of the date of this decision. I also find that the landlord's documentary evidence supports that the project started as a renovation project and due to extenuating circumstances described above, resulted in an unexpected change to a demolition/new build project after more than 1 year from the effective vacancy date, which was January 31, 2020.

Given the above, I find the landlord has met the burden of proof and **I dismiss** the tenant's application in full as a result.

I do not grant the filing fee as the tenant's application has failed.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties.

The tenant has liberty to reapply for the portion severed as set out on page two of this decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 22, 2021

Residential Tenancy Branch