Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- Compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants; and
- to recover the cost of the filing fee.

The tenants, the landlord and the landlord's advocate/spouse attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 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, both parties affirmed they were not recording the hearing.

Thereafter all 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 was provided evidence from the parties including: testimony and written submissions, all of which has been reviewed. Not all evidence has been referenced in this Decision. The principal aspects of the tenant's claims and the landlord's responses and my findings around it are set out below.

Further, I have used my discretion under Rule 3.6 to decide whether evidence is or is not relevant to the issues identified on the application and decline to consider evidence that I deem is not relevant.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

At the beginning of the hearing, the advocate requested that the hearing be adjourned, due to the landlord having filed their own application for dispute resolution for compensation from the tenants. That matter is set to be heard on May 17, 2022, before another arbitrator. The advocate requested that the parties' two applications be heard together.

The tenants' application was filed on April 26, 2021, and through an administrative error at the RTB, the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was not provided to the tenants for service on the landlord until June 8, 2021. The landlord was served via registered mail on June 10, 2021, and had since that time to file their own application. Instead, the landlord's application was not made until October 6, 2021.

I find that to further delay the hearing on the tenants' application until over a year after they initially made their application would be administratively and procedurally unfair to the tenants. As a result, I denied the request for an adjournment.

Additionally, the parties confirmed receiving the other's evidence, with one exception, and the landlord confirmed receiving the tenants' application. The tenants denied receiving, and the landlord confirmed that they had not served their 5-page narrative to the tenants as part of their evidence, as it contained their argument.

I note that although I disallowed the landlord's evidence not served to the tenants, as required by the Rules, the landlord and advocate were allowed to provide their testimony and I have made some references to the written material, as I needed for this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order pursuant to section 51 of the Act and recovery of the filing fee?

Background and Evidence

The tenancy began on October 15, 2016 and ended on or about February 1, 2021. The monthly rent at the end of the tenancy was $2,320.68, confirmed by both parties. Filed in evidence was a copy of the written tenancy agreement.

The parties agreed that the landlord issued the tenant NH a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Notice), which listed with effective dates of April 23, 2021 and May 01, 2021. The Notice was dated December 23, 2020, and the tenant confirmed receiving it on that date.
The reason stated in the Notice was that the landlord would demolish the rental unit. Filed in evidence was the Notice.

As to the details of planned work, the Four Month Notice states as follows:

The work I am planning to do is detailed in the table below:	
Planned Work	Details of work (*If you are ending the tenancy for renovations or repairs, explain why the renovations or repairs require the rental unit to be vacant).
demolish	Application for Demolition Permit has been submitted to City of [redacted] since Sept 13 2019. See attached. As per the city requirements the permit cannot be issued until a hazardous materials report, clearance letter, and vector control reports are submitted. We have attempted to obtain these reports without having the unit empty, however it is not possible. The work required to complete these reports cannot be completed while the unit is occupied and the unit cannot be re-occupied afterwards. This notice is being given in good faith.

[Reproduced from Notice except for redacting personal information]

The tenant said they accepted the Notice, gave their notice to vacate to the landlord on January 8, 2021, and vacated February 1, 2021. A former neighbour informed the tenants on February 10, 2021, the house was up for sale.

The tenant submitted that the landlord has not taken any action to demolish the residential property and an inquiry to the local municipality showed that the landlord cancelled the demolition permits.

The advocate said that their intention was to demolish the house in order to build another home. To that end, they applied for the required permits in 2019, which normally takes 6-8 months. The demolition permit application was made on September 13, 2019, and the fee was $14,176.

The landlord submitted that other documents were submitted to the local municipality on May 20, 2020, and a Lot Servicing fee of $11,972 was paid to the local municipality on August 5, 2020. The Building Permit application was filed on August 24, 2020. The landlord submitted that all plans, proposals, and all other relevant paperwork are in place for the proposed construction before demolition of the old structure and issuance of the demolition permit is allowed.

The landlord submitted that the whole process of getting final approval was slowed down due to the pandemic. However, according to the landlord, “things were starting to look better towards end of 2020”.

The landlord submitted that prior to issuance of demolition permits, a hazardous substance report was required. Due to the possibility of hazardous materials, the home had to be vacated. The landlord submitted that they discussed with the tenants this requirement and in turn, the tenants said they were planning on moving anyway.

The landlord submitted that they planned on issuing the Notice in November, 2020, but the tenants asked for an extra month, as they wanted until the end of April 2021 to move. The Notice was served December 23, 2020.

The landlord submitted that the tenants vacated at the end of January 2021, at which time they, the landlords, started making inquiries with tradespeople to start demolition and construction work. At this time, according to the landlord, they became aware of the effect of the pandemic had on the construction industry. Many tradespersons were not available, or they had become too expensive. Lumber prices had increased. For these reasons, the landlord submitted that the construction of a new home may not move ahead for 4-6 months.

The landlord submitted that they approached the tenants about staying as the demolition may not be carried out and the tenants said they were moving. The landlord said that the tenants accepted that the Notice was withdrawn, by mutual consent.

The landlord submitted that after the tenants moved out, they discussed the situation with a realtor friend, who indicated that it was not economically viable to demolish and build properties due to the pandemic, as housing prices have gone up. According to the landlord, their realtor friend suggested it made more economic sense to sell the property.

The advocate said that the residential property went on the market for sale on February 8, 2021, and sold a month later.

The landlord submitted that the pandemic was unforeseeable and caused the circumstances beyond their control, leading them to abandon their project.

The landlord asserted that in the current times, “there could have been no more extenuating circumstances than the pandemic to cause a failure of carrying out my plans.”

The tenants, in rebuttal, said that “100%”, there was never any conversation with the landlord about cancelling the Notice. The tenant said that they never had any conversation with the landlord until January 8, 2021, when they were delivering their notice to vacate.

The tenant said that they told the landlord they were going to move at some point and asked the landlord if they could delay the date until the end of the school year. According to the tenant, the landlord said no.

The advocate said that they kept the tenants informed of the process all along the way.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that the landlord served the tenant the Four Month Notice on December 23, 2020, for effective dates of April 23, 2021 and May 01, 2021. The reason listed on the Notice for ending the tenancy was that the landlord would demolish the rental unit.

The tenancy ended on or before January 31, 2021, when the tenants elected to provide notice to end early, as allowed under section 50(1) and moved out on that date.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

The landlord confirmed that the home was listed for sale on February 8, 2021, within 8 days of the end of the tenancy and the house was sold within a month. Therefore, the landlord has not and will not accomplish the stated purpose for ending the tenancy. The landlord, however, cites that extenuating circumstances prevented them from demolishing the rental unit.

Residential Tenancy Policy Guideline 50 provides examples of extenuating circumstances, such as a landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

Examples of circumstances that are not extenuating include when a landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In this case, the landlord said that the effects of Covid-19 on the world prevented them from demolishing the rental unit and that these effects were unforeseeable. These effects included increased costs and delays in construction and availability of tradespersons.

I take judicial notice that Covid-19 was introduced to the public consciousness and began in earnest in March 2020, the month when public health restrictions and State of Emergency orders were put in place.

The landlord would have, or should have, been well aware of the changes in all aspect of lives caused by Covid-19 by December 23, 2020, the date the Notice was issued. It was up to the landlord to investigate the feasibility of demolishing the rental unit prior to issuing the Notice. The landlord themselves knew of the delays in being issued permits and approvals brought on by the pandemic, as this project initially began in 2019.

For this reason, I do not accept the effects of the Covid-19 pandemic was unforeseeable.

Further, I interpret the landlord's evidence to show that their realtor informed them that it would be more economically advantageous to sell their home rather than demolish their home and rebuild.

I do not find that the landlord's economic advantage is an extenuating circumstance.

I also do not find there was a mutual agreement to withdraw the Notice. The tenants denied that they agreed to a mutual withdrawal of the Notice and there was nothing in writing to show otherwise.

I therefore find on a balance of probabilities and from my interpretation of the relevant evidence and Policy Guideline 50 that the landlord submitted insufficient evidence that extenuating circumstances prevented them from accomplishing the stated purpose.

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

As a result, I grant the tenant a monetary award of **$27,848.16** as requested, the equivalent of monthly rent at the end of the tenancy of $2,320.68 for 12 months.

I also grant the tenant recovery of their filing fee of **$100.00**, as they have been successful in their application, and include that amount with their total monetary award.

To give effect to this award, I grant and issue the tenants a final, legally binding monetary order of $27,948.16.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Information for the parties

The monetary order I issued to the tenants is enforceable as of the date of the order and stands on its own, regardless of the outcome of future dispute resolution matters pending or otherwise.

The parties are informed that evidence does not transfer from file to file, so that any evidence they want considered in relation to the landlord's application for dispute resolution set for May 17, 2022, must be submitted for that hearing. This may include a copy of my Decision, if the parties choose, as the next arbitrator will not be aware of this hearing unless specifically informed.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of $27,848.16, and recovery of the filing fee of $100 for a total of $27,948.16, is granted and they have been granted a monetary order for that amount.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 8, 2021

Residential Tenancy Branch