



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 1, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement related to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (“the Four Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlords and Tenants attended the hearing. The Landlords were assisted by legal counsel. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to monetary compensation from the Landlords?

Background and Evidence

The Landlords and Tenants testified that the tenancy began back in 2014 as was on a month-to-month basis when it ended. Rent in the amount of \$1,040.00 was to be paid

to the Landlords by the first day of each month. The Tenants moved out of the rental unit in April 2021 after receiving a notice to end tenancy from the Landlord.

The Landlord issued the Tenants the Four Month Notice dated December 28, 2020. The Notice provides the following reason for ending the tenancy:

I am going to demolish the rental unit.

The Four Month Notice indicates that the Landlord has obtained all permits and approvals required by law to do the work. The Notice provides that the Landlord has a building permit from the city issued December 22, 2020 and provides the permit number.

The Four Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person. The Four Month Notice provides an effective date of May 15, 2021 for the Tenants to vacate the rental unit.

The Tenants testified that they accepted the Four Month Notice and moved out of the rental unit on April 5, 2021.

Money Owed or Compensation for Damage or Loss Under the Act

The Tenants are seeking compensation in the amount of \$12,480.00 which is twelve months of rent paid under the tenancy agreement.

The Tenants testified that they understood that the Landlords were trying to sell the residential property prior to them receiving the Four Month Notice from the Landlords.

The Tenants testified that on May 27, 2021, they noticed that the rental property was listed for sale. The Tenants contacted the Landlord and asked for an explanation. The Tenants testified that they later called the realtor and were informed that the residential property is not for sale.

The Tenants stated that the Landlord had no right to issue the Four Month Notice if they were not going to follow through with the reason for ending the tenancy cited in the Notice.

The Tenants stated that the Landlords' documentary evidence contains a document named Buyers Notice to Seller dated December 23, 2020 which indicates that a purchaser A.G. is intending to occupy the rental unit.

The Tenants stated that the land title documents they have provided in their documentary evidence shows that new owners took possession of the residential property on May 17, 2021, and 10 days later the property was listed for sale.

The Tenants provided testimony acknowledging that the residential property was eventually demolished on October 13, 2021, by a new owner; however, they are seeking compensation because the Landlord who issued the Four Month Notice, sold the residential property rather than demolishing the rental unit.

Legal counsel for the Landlord stated that in November 2020 the Landlords informed the Tenants that the residential property was listed for sale. The Landlords entered into a sale contract with A.G. effective May 17, 2021, and a term of the sale contract is that the purchaser would obtain a demolition permit, whereupon the original Landlord would serve the Tenants with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. The Landlords provided a copy of the sale agreement. The buyer A.G. removed the conditions of sale on December 28, 2020 and the Landlord issued the Four Month Notice providing the demolition permit number that was issued to a contractor working with the purchaser. The Landlords provided a copy of the removal of subject to clause document, and a copy of the demolition permit.

Counsel for the Landlord stated that the contract for sale of the property was then assigned to new buyers and the entirety of the sale contract with the original Landlord applied to the new buyer. The Landlords provided a copy of a Contract of Purchase and Sale Amendment dated April 17, 2021 naming R.P. as the new purchaser.

The Landlords' counsel stated that the new buyers listed the property for sale. Counsel submits that the new buyers amended the sale listing on June 11, 2021 to include information that the residential property would have to be demolished by any purchaser.

The Landlords' counsel submitted that the Tenants were not wrongfully evicted and if anyone is responsible to pay compensation to the Tenants, it would be the purchaser. Counsel provided a copy of a tenancy branch decision from October 2009 that they would like considered in support of their position.

The Landlord's counsel submitted that the Landlord and initial buyer believed on advice from a relator that the standardized form called Buyers Notice to Seller needed to be completed and signed.

Legal counsel for the final purchaser was present and stated that a for sale sign was placed on the residential property on May 27, 2021, and the property was listed on June 14, 2021. Counsel submitted that the sale listing included information that a demolition permit is in place and the property was required to be demolished and could not be rented.

Legal counsel for the final purchaser stated that the sale listing was cancelled on July 7, 2021 and the purchaser reached out to companies to demolish the residential home. Counsel submitted that it took time to find a company and the residential home was demolished by October 13, 2021. Counsel for the final purchaser pointed out that they are not named as a respondent in the Tenants' application.

Counsel for the Landlord stated that the intention of the Landlord was that the property would be demolished, and the property has been demolished. The Landlords counsel stated that the property was never re-rented.

With respect to extenuating circumstances that may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying compensation, the Landlords' counsel stated that the Landlords were requested by the original purchaser to issue the Four Month Notice and the final purchaser took on those terms and responsibility.

Analysis

A landlord may end a tenancy for a demolition of a rental unit by giving notice to end the tenancy effective on a date that must be not earlier than 4 months after the date the tenant receives the notice.

Section 49(6) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit.

With respect to tenant's compensation, section 51(2) of the Act provides:

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.*

Section 51(3) of the Act provides: 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, 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*

Monetary Claim

Based on all of the above, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

I find that the Landlords issued the Four Month Notice to the Tenants citing that the Landlords are going to demolish the residential property. I accept that the Landlords issued the Four Month Notice based on an agreement with the original purchaser that the purchaser obtained a demolition permit and would demolish the rental unit after the sale completed and they took possession of the property.

The problem I find with the agreement stated above is that the Act, does not permit a Landlord to end a tenancy by issuing a Four Month Notice for Demolition, on behalf of a purchaser who has the intention to demolish the rental unit.

Section 49(5) of the Act permits a Landlord to issue a Two Month Notice to End Tenancy for Landlord's Use of Property when a purchaser intends in good faith to occupy a rental unit; however, section 49(6) of the Act does not contain the same language and does not provide the Landlord and purchaser the same right. Under the Act, the Landlord cannot transfer a right and obligation to demolish a rental unit to a purchaser.

With respect to the issuance of the Four Month Notice, I find that the Landlords did not have the intention to follow through with demolishing the rental unit, as that intention was held by the original purchaser who arranged for the demolition permit and received the demolition permit.

With respect to the Buyers Notice to Seller, I find that the Landlords mistakenly believed that they could sell the property and issue the Four Month Notice for the reason of demolition and transfer the responsibility for the demolition to the purchaser. It seems likely that this is why the Buyers Notice to Seller was completed by the parties; a form that applies when a purchaser intends to occupy a rental unit and asks for a two month notice to end tenancy to be issued. I find that the Buyers Notice to Seller is of no force or effect with respect to the issuance of the Four Month Notice.

The obligation to demolish the residential property did not transfer to the purchasers because the Act does not expressly permit this. I find that the initial purchaser of the residential property, and the final purchaser of the residential property, did not take on a legal obligation under the Act to pay compensation to the Tenants with regard to a breach of the Act related to the Four Month Notice.

I accept the evidence before me that the rental unit was demolished on October 21, 2021. While the Landlord did not apply for and receive the demolition permit, and did not demolish the residential property, I have considered whether or not the Tenants should receive compensation from the Landlords. I find that the purchasers had no legal obligation under the Act to demolish the rental unit and therefore the purchaser cannot accomplish the stated purpose of demolishing the rental unit on behalf of the Landlords.

I have considered the tenancy branch decision from October 2009 provided by the Landlord. Section 64(2) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part. I find that the Decision provided is not sufficiently related to the issue before me. The Decision relates to whether or not a tenancy is ending based on issuance of a Two Month Notice to End Tenancy for Landlords Use of Property; whereas the matter before me is related to whether compensation should be paid related to a Landlords obligation to accomplish the stated purpose of ending a tenancy with a Four Month Notice.

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation. The Landlords' counsel stated that the extenuating circumstances are that the purchaser requested the Landlord to serve the Four Month Notice and the final purchaser took on those terms.

It was the Landlords who ended the tenancy by issuing the Four Month Notice. As mentioned earlier, I find that the purchaser of the residential property did not take on a legal obligation under the *Act* to pay compensation to the Tenants with regard to a breach of the *Act* related to the Four Month Notice. In accordance with section 51(3) of the *Act* it is my finding that the circumstances submitted by the Landlord as an excuse from paying compensation to the Tenant do not meet the threshold of an extenuating circumstance in accordance with the legislation and policy guideline.

I find that the Landlords did not accomplish the stated purpose for ending the tenancy and owe the Tenants \$12,480.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Filing fee

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$12,580.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords served the Tenants with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit and failed to accomplish the demolition the rental unit as stated within the Four Month Notice. The Landlords must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenants are granted a monetary order in the amount of \$12,580.00 for the Landlords breach of the *Act*, and the cost of the filing fee.

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: December 28, 2021

Residential Tenancy Branch