



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties 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 confirmed their email addresses for service of this decision.

The tenants testified that they served the landlord with their application for dispute resolution and evidence via registered mail on June 21, 2021. The landlords confirmed receipt of the above package on June 24, 2021. I find that the tenants' application for dispute resolution and evidence were served on the landlords in accordance with sections 88 and 89 of the *Act*.

The landlords testified that they served the tenants with their evidence via registered mail on November 9, 2021. The tenants testified that they received the landlords' evidence but could not recall on what date. I find that the landlord's evidence was served on the tenants in accordance with section 88 of the *Act*.

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*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 15, 2016 and ended on August 31, 2019. Monthly rent in the amount of \$943.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that tenant M.W. was personally served with two copies of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Four Month Notice") signed by one of the landlords on April 28, 2021. Both parties agree that tenant S.W. was personally served with two copies of the same Four Month Notice signed by the other landlord on April 30, 2021. The Four Month Notices were entered into evidence and state that the tenants must move out of the rental unit by August 31, 2019. Both parties agree that the tenants moved out of the subject rental property in accordance with the Four Month Notices.

The Four Month Notices states that the landlords are ending the tenancy because they are going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Four Month Notice stats that the landlords planned to do the following work:

Planned Work	Details of Work
Bathroom remediation	Addressing water issues. Issue one, to replace all four washroom roof vents, which will in turn negate opening up washing ceilings and replacing conduits, insulation, bathroom fans and drywall. Replacing windows, window

	framing and drywall in same washrooms.
Storm sewer excavation	Issue two, storm sewer drainage. The storm sewer has failed and must be replaced. As such the entire building will require excavation and new storm sewer installed.
Perimeter drainage remediation	Issue three, perimeter drainage on the steep slope must be addressed at the same time as excavation and therefore waterproofing to be performed on exterior and interior alike.
Power line remediation	There is a fourth issue not pertaining to water and that would be the power lines connected to this building. The power lines are pulling the fascia boards off the building. Power to the building will need to be shut off and repairs and replacement as required. Time line indeterminate as we do not know extent of work.

The tenants testified that they are seeking 12 months rent as compensation because the landlords did not complete the work stated as planned on the Four Month Notices. The tenants testified that after they were evicted, they would drive by the subject rental property and did not see evidence of excavation or other work being done. The tenants testified that they saw cars in the car port and lights up for Christmas by December of 2019.

The tenants entered into evidence an advertisement for a three-bedroom townhouse that was posted on September 25, 2019. The advertisement reads in part:

New flooring, paint, electrical, tile, sinks etc
The rent is \$1,400.00 and \$1,500.00 for end units.

The landlords testified that the subject rental property is the third townhouse is a row of four townhouses, which all share a roof, foundation and drainage. The landlords testified that the building including all four townhouses was built in 1968 and required significant remediation due to water incursion. The landlords testified that all of the townhouses that were occupied by tenants were served Four Month Notices because the work required to remediate the building affected all four units.

The landlords testified that they also own other townhouse buildings in the area which were also being worked on at that time to bring them up to code. The landlords testified that the advertisement entered into evidence by the tenants was not for the subject rental property. The landlords testified that it was a general add for all of their

townhouses that were being worked on and that they decided the end units would be listed for \$1,500.00 and the interior units for \$1,400.00. The landlords testified that the photographs in the advertisement are of the second townhouse in the building, not the subject rental property. The landlords testified that while the advertisement was posted at the end of September the second townhouse was not ready for new tenants until December 1, 2019.

The landlords testified that they had two candidates for the second townhouse who had great references. The landlords testified that they asked their contractor if it was possible to get the third townhouse, the subject rental property, to be ready for a move in date of November 15, 2019 as requested by the qualified applicants. The landlords testified that their contractors made a concerted effort to get the subject rental property for rent for November 15, 2019 which was achieved, and new tenants moved in on November 15, 2019.

The landlords testified that all of the planned work stated on the Four Month Notice was completed. In regard to bathroom remediation, the landlords testified that the original construction did not ventilate the main bathrooms in the townhouses which were located on the top floor of the townhouses. The landlords testified that a previous owner had installed ventilation but that the materials used were disintegrating and that all of the ventilation required replacement and alteration to bring up to code. The landlords testified that the bathroom ceilings were moist to the touch and that the failing ventilation caused significant water damage.

The landlords testified that their contractor shut down the operation of the bathrooms over a period of a month while the ceiling drywall was removed, and new ducting was installed. The landlords testified that the contractor also fixed the roofing where birds had been nesting and damaging the building from the exterior. The landlords testified that the windows were replaced. The landlords entered into evidence photographs of:

- the contractor setting up roof access
- ventilation materials on the ground ready for installation
- bird poo on the side of the building where birds were nesting and
- wet spots in ceilings

The landlords entered into evidence an invoice dated October 15, 2019 in the amount of \$9,982.00 which states:

- [Address of rental building]
- Redirect bathroom fan ducting to through the roof, repair the soffits, redo the drywall ceiling of the bathrooms

The landlords testified that the storm sewer excavation and perimeter drainage remediation were connected and repaired together. The landlords testified that fir trees, which had previously been removed, had damaged the cinderblock foundation of the subject rental building and water and efflorescence were seeping into the lowest level of the building, into all four townhouses. The landlords entered into evidence photographs showing efflorescence and moisture on the cinderblocks in several units including the subject rental property.

The landlords testified that the perimeter drainage pipes were made of concrete and were cracked and broken which is why water and efflorescence leaked into the foundation. The landlords testified that the all the perimeter drainage pipes were replaced with pvc pipes and gravel was placed on top of them. The landlords entered evidence photographs of excavation and broken cement pipes.

The landlords testified that the efflorescence on the cinderblocks on the interior of the building had to be ground out. The landlords testified that the workers who completed this wore full hazmat suites as the old paint could contain lead and carcinogens. The landlords testified that fine dust was everywhere and was not safe to breathe. The landlords testified that the blocks were refilled, patched, resealed and painted with masonry product for cinder blocks.

The landlords entered into evidence:

- an account of labour for masonry work between August 16-30, 2019
- an account of labour and supplies for masonry work between September 5-20, 2019- receipts included
- an account of labour and supplies for masonry work between September 27-October 5, 2019- receipts included

The landlords testified that they believed the problem with the storm sewer was caused by the failed perimeter drainage and that once the perimeter drainage was completed the storm sewer issue would be resolved. The landlords testified that they learned this year that the storm sewer issues were actually caused by the storm sewer utilizing the sewage sewer. The landlords testified that this was not a common practice even in 1968 when the property was built and was likely done as a cost saving measure at that time. The landlords testified that this was remediated this year. Receipts for same dated August 20, 2021, September 21, 2021, and October 4, 2021 were entered into evidence.

The landlords testified that heavy powerlines which service all four townhouses were not properly affixed to the building and were pulling the soffits off which allowed birds to nest. The landlords testified that their contractor was in contact with BC Hydro and was able, with difficulty, to repair the problem. The landlords testified that the power was shut off while the repairs were made. The landlords entered into evidence an invoice from the contractor dated October 15, 2019 in the amount of \$2,017.00 which states in part:

Remove the tension of the main power feed cable, repair the fascia boards and reattach the cable anchor

The landlords testified that in addition to the work described on the Four Month Notice electrical work, flooring installation and plumbing work at the subject rental property was completed. The landlords entered into evidence an invoice dated October 17, 2019 for 24 hours of electrical work split between the subject rental property and one of the other townhouses in the amount of \$1,200.00. The landlords entered into evidence an invoice dated October 25, 2019 for the cost of installing flooring in the subject rental property and one of the other townhouses in the amount of \$1,792.00. The landlords entered into evidence an invoice dated October 11, 2019 which states that the following work was completed at the subject rental property:

- installed new tub, drain, was very difficult!
- Installed new kitchen sink and faucet, re-made drain
- Installed used lav. and new faucet in powder room.

The tenants testified that the landlords have not proved that they needed the subject rental property to be empty to complete the repairs. The tenants testified that lots of the receipts are for superficial work. The tenants testified that the excavation only happened in 2021, not in 2019 when they were evicted. The tenants testified that the landlords have not provided evidence that the windows were replaced other than the October 15, 2019 invoice from the landlord's contractor.

The tenants testified that tenants in some of the other buildings the landlords were renovating were permitted to stay during renovations. The tenants testified that they don't see why it was necessary for them to move out when other blocks of tenants were allowed to stay.

The landlords testified that renovations in other buildings did not require vacant possession. The landlords testified that due to the water ingress the main bathroom was turned off for a month and the cinder block remediation in the lower level put toxins into

the air that were not safe to breathe. The landlords testified that they did their best to maintain their old properties and to not operate substandard rentals.

The landlords testified that they thought they solved the sewer problem in 2019 and could not have known that the builders of the subject rental property in 1968 cut corners and allowed the storm sewer to utilize the sewage sewer pipes. The landlords testified that as soon as they knew the true cause of the problem, they had it fixed. They landlords testified that all the drainage work was completed in 2019.

The tenants testified that the landlords did not prove that they replaced the pipes. The landlords testified that photographs of the broken cement pipes that were replaced are in evidence. The landlord entered into evidence photographs of excavation around the perimeter of the subject rental property and the exposed concrete pipes the landlords testified were replaced with PVC pipes. The landlords testified that the exterior excavation and interior cinderblock remediation were completed together as the exterior drainage problems caused the water incursion through the cinderblock.

Analysis

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

(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 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.

Residential Tenancy Policy Guideline # 50 states:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition)....

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time....

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

The reason to end tenancy stated on the Four Month Notices was renovation that required vacant possession. Based on the landlords' testimony, the photographs entered into evidence and the contractor invoice dated October 15, 2019, I find that the upstairs bathroom was unusable for a period of approximately one month while it was remediated.

Based on the landlords' testimony, the photographs entered into evidence and the record of masonry work entered into evidence, I find, on a balance of probabilities, that the landlords replaced the old concrete perimeter drainage pipes with pvc pipes. Based on the landlords' testimony and the many photographs showing water damage and efflorescent seepage through the cinder blocks, I find that the subject rental property and building had significant water ingress issues that required immediate remediation. I accept the landlords' testimony that the subject rental property was uninhabitable while the cinderblock remediation was occurring given the fine particulates in the air from the grinding.

I accept the landlords' testimony that they believed solving the perimeter drainage areas would fix the storm sewer issues they were facing. I accept the landlords' testimony that once it became known that the storm sewer was utilizing the sewer system, the landlords remedied the problem.

Based on the testimony of the landlords and the contractor invoices dated October 15, 2019 I find that the power attachment issue at the subject rental property was fixed.

I do not find the tenants' testimony that they drove by a few times and did not see work being completed to be determinative on the issue. I find that the landlords have proved, on a balance of probabilities, that the planned work stated on the Four Month Notice was completed, to the best of their knowledge, within two months of the tenants vacating the subject rental property.

I accept the landlords' undisputed evidence that the subject rental property was re-rented for November 15, 2019. Both parties agree that the landlords were renovating other nearby townhouses. I find that the wording of the advertisement, that interior units are renting for \$1,400.00 per month and exterior units are renting for \$1,500.00 per month lends credence to the landlords' testimony that the advertisement was for more than one townhouse in more than one rental building, some of which were ready sooner than the subject rental property.

Based on the invoices evidence entered into evidence, which were dated from August 2019 to October 2019, I accept the landlords' testimony that the subject rental property was not ready to be rented until November 15, 2019. I find that it was reasonable for the landlords to try to find new tenants for when the property would be ready. I find the presence of the advertisement does not prove that the planned renovations stated on the Four Month Notices were not completed.

I find that given the disruption to power, the main bathroom being unusable for a month and the presence of potentially dangerous particles in the air from the cinderblock grinding, the renovations at the subject rental property required vacant possession.

I find that the fact that the storm sewer was not ultimately fixed until 2021 does not render the Four Month Notice any less valid. As stated earlier, I accept the landlords' testimony that they believed that the storm sewer issues would be resolved when the perimeter drainage was repaired. I accept the landlords' testimony that it is not common practice to tie the storm sewer and sewage systems together, even in 1968. I find that

the work that was completed in 2019 was enough to require vacant possession of the subject rental property.

Based on all the invoices and receipts entered into evidence, I find that work on the subject rental property started immediately after the tenants vacated and that the stated purpose for ending the tenancy, that being renovations that require vacant possession, were completed. Therefore, pursuant to section 51 of the *Act*, I find that the tenants are not entitled to compensation. The tenants' application for dispute resolution is dismissed without leave to reapply.

As the tenants were not successful in this application for dispute resolution, I find that the tenants are not entitled to recover the filing fee for this application.

Conclusion

The tenants' application for dispute resolution is dismissed without leave to reapply.

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 07, 2021

Residential Tenancy Branch