Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1135551 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation payable where a landlord does not use the rental unit for the purpose stated on a landlord's notice to end tenancy for landlord's use of property.

Both parties appeared or were represented at the hearing. The parties were affirmed and ordered to not make an audio recording of the proceeding.

As to service of hearing materials, the tenant sent the proceeding package and evidence to the landlord's agent via email on August 27, 2021. The landlord's agent confirmed receipt of the email and did not take issue with respect to being served by email.

The landlord prepared a response and sent it to the tenant via registered mail on September 4, 2021. The tenant confirmed receipt of the registered mail.

The parties then exchanged additional evidence on December 21, 2021. Both parties confirmed receipt of the additional evidence sent by the other.

I was satisfied the parties exchanged their respective materials upon each other and I admitted the materials into evidence for consideration in making this decision.

Preliminary and Procedural Matters

The landlord raised a number of preliminary and/or procedural issues, as summarized out below:

1. Tenant served proceeding package late

The landlord pointed out that the tenant's proceeding package was available for service starting on August 19, 2021. As such, the tenant's deadline for serving the landlord was three days later, or August 22, 2021. In sending the proceeding package on August 27, 2021 the landlord calculates the tenant was six days late in serving him.

The tenant submitted that she suffers from Chron's disease she was suffering a flare up in the week that the Residential Tenancy Branch ("RTB") sent her the proceeding package. On August 27, 2021 she was finally feeling well enough to tend to matters, including going for blood work on August 27, 2021, and sending the proceeding package to the landlord. The tenant submitted proof of having blood drawn on August 27, 2021.

I asked the landlord if he was prejudiced by receiving the proceeding package five days after it should be sent or if he needed more time to prepare a response or gather evidence. The landlord confirmed that he was not prejudiced and he did not need more time. Rather, the landlord was of the position the tenant's application should be dismissed outright due to the tenant's failure to follow the "rules" by serving him by August 22, 2021.

Section 59(3) provides for the time limit for serving an Application for Dispute Resolution, as follows:

> (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.
>
> [My emphasis underlined]

The Act does not provide a specific consequence where a party does not serve the Application for Dispute Resolution with three days of receiving the proceeding package

from the RTB; however, the Director may provide for a different period of time to serve, as I emphasised above.

Considering the tenant provided some evidence she was suffering from a medical issue near the time the proceeding package was provided to her; the proceeding package was sent only five days late for a hearing scheduled approximately six months later; and the landlord was not prejudiced by the late service, I granted a five day extension and as provided under section 59(3) I ordered the hearing package may be served on August 27, 2021. Therefore, I decline to dismiss the tenant's Application for Dispute Resolution solely on the basis it was not served within three days of the tenant receiving the proceeding package.

2. Naming of tenants

Four co-tenants had been named on the Application for Dispute Resolution. The landlord recognizes the tenant appearing at this hearing as a tenant; however, the landlord does not recognize the other three named co-tenants as its tenants. The landlord pointed to the tenancy agreement in support of its position.

The tenancy agreement lists four different co-tenants than that named on this Application for Dispute Resolution. The tenant before me had undergone a legal name change after the tenancy started and the tenancy agreement reflects her former name. The landlord recognized this tenant, who underwent the legal name change, as his former tenant. The tenant submitted that during the tenancy her co-tenants moved out and were replaced with different co-tenants although neither the former landlord, nor the current landlord, ever drafted a new tenancy agreement reflecting the changes.

The landlord stated that people came and went from the rental unit frequently and he was not certain who lived there but he was only prepared to recognize those on the tenancy agreement as being his former tenants.

The tenant submitted a copy of a written reference letter that was provided by the landlord and named the applicants that were named on this Application for Dispute Resolution; however, the tenant was willing to have the other co-tenants excluded as named parties so as to move on from this issue and proceed with the hearing.

In light of the above, and with consent of both parties, I amended the style of cause and this decision reflects the name of only one tenant, who is the tenant appearing at the

hearing. As I informed the parties, if the tenant is successful, it would be up to the co-tenants to apportion the award amongst themselves.

3. Tenant's claim is overstated

The landlord argued that because there were four co-tenants listed on the tenancy agreement and only one of the tenants named on the tenancy agreement has made a claim, the tenant's claim ought to be limited to one-quarter of the amount sought.

I rejected this position summarily as co-tenants are jointly and severally liable and entitled to amounts payable under the Act.

Having disposed of the preliminary issues, I proceeded to explain the hearing process to the parties and gave the parties an opportunity to ask questions about the process.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation equivalent to 12 months' of rent, as claimed against the landlord?

Background and Evidence

The tenant entered into a tenancy agreement with the former landlord starting November 1, 2014. That tenancy agreement was subsequently replaced by a new tenancy agreement starting on May 1, 2016.

The May 1, 2016 tenancy agreement was the last tenancy agreement executed by the tenant for the subject property and was the only tenancy agreement submitted into evidence. From hereon in this tenancy agreement is simply referred to as "the tenancy agreement".

The named landlord purchased the property in 2017 and was provided a copy of the tenancy agreement.

In February 2019 the landlord submitted a redevelopment permit application to the City for the subject property. A proposed redevelopment placard was placed in front of the residential property. The tenant testified that she contacted the City to make enquiries about the redevelopment proposal and wrote a letter of opposition to the city.

On July 29, 2021 the landlord served the tenant with a document entitled “Notice of Redevelopment and Tenant Relocation Plan Information” herein referred to as “the Notice”.

On page 1 of the Notice, it states (with identifying information obscured by me):

1135551 BC LTD on behalf of the owner of [redacted], is coordinating a development permit application that would require the relocation of tenants of the existing rental building on the site. An application for redevelopment was formally submitted to the City of Vancouver on **Feb 27th 2019**.

1135551 BC LTD is aware that this application, if approved, would cause a degree of inconvenience and financial burden on the existing residents. Our goal is to provide support to the current tenants in order to make the transition out o[redacted] BC smooth with as little financial pressure as possible.

Tenants residing in [redacted] BC for at least one year prior to **Feb 27th 2019**, when the development permit application was opened, are eligible for the Tenant Relocation Plan described below. These measures fulfill the requirements of the City of Vancouver's Tenant Relocation and Protection Policy.

Tenant Relocation Plan

Tenant Notice and Compensation

As the owner and landlord of [redacted], BC, we will go above British Columbia's Residential Tenancy Act requirements for ending a tenancy due to the landlord's use of the property for major construction. We commit to providing 4-months' notice to end tenancy from Aug 1st,2019, which the tenancy will be end on or before Dec 1st,2019.

In addition, we will provide free rent or the equivalent financial compensation on or before the move-out date to each tenant that falls under this plan as follows:

- 2-months' rent for those with tenancies from 1 up to 5 years
- 3-months' rent for those with tenancies from 5 up to 10 years
- 4-months' rent for those with tenancies from 10 up to 20 years
- 6-months' rent for those with tenancies over 20 years

Which in this case, the tenancy starts on May 1st,2016, on a month to month basis, which a two months free rent or the equivalent financial compensation will be provided at the date of moving out.

On page 2 of the Notice, it states (with identifying information obscured by me):

Moving Expenses

In addition, a total of one thousand Canadian dollar of moving expense will be provided at the date of moving out.

**Note that Tenant Relocation and Protection Policy permits Landlord to provide flat-rate compensation for moving expenses of $750 for a studio or 1-bedroom unit and $1,000 for a 2+ bedroom unit.

Conclusion

1135551 BC LTD is committed to ensuring that the tenant relocation process is smooth with little burden on the existing residents. Please feel free to contact ... at

Landlord:

1135551 BC LTD

Signature: [redacted]

Date: July 29th, 2019

The tenant testified that upon receiving this Notice, she and her roommates/co-tenants had a discussion and decided to accept the compensation provided in the Notice and move out of the rental unit by December 1, 2019. The tenant(s) were not served with any other form of a notice to end tenancy by the landlord. The tenant stated that, at that time, they believed the July 29, 2019 Notice was a valid notice to end tenancy. Nor, did she or the other roommates/co-tenants express any disagreement or dispute to the landlord or file an Application for Dispute Resolution to dispute the Notice or compliance with the Act.

The tenant testified that after receiving the Notice she presented post dated rent cheques to the landlord for months up to and including the month of October 2019. The landlord's agent handed back the rent cheque for October 2019 indicating October 2019 would be a free month of rent as provided under the compensation plan described in the Notice. The tenant took the October 2019 cheque back and understood that there

would be no rent payable for October or November 2019 in keeping with the compensation provided in the Notice.

The tenant acknowledged that in addition to paying no rent for October 2019 and November 2019, they also received $1000.00 from the landlord for moving expenses.

The landlord's agent confirmed that other than the Notice of July 29, 2019, the landlord did not issue any other form of a notice to end tenancy to the tenant(s). The landlord explained that he was unfamiliar with how to end a tenancy so that he could redevelop the property so he "googled" it and based on the results he drafted the Notice. The landlord's agent stated that he did not recall a conversation with the tenant regarding the rent cheque for October 2019 but the landlord's agent was in agreement that rent was not collected for October 2019 or November 2019 and he also paid the tenants $1000.00 for moving costs in keeping with the Notice. The landlord also confirmed that the tenant did not express any dispute or disagreement with the Notice and appeared to have accepted the Notice, including the proposed compensation and an end to the tenancy effective on December 1, 2019.

In November 2019 the landlord applied for a demolition permit for the house on the property but it was denied as the landlord did not have the redevelopment permit in place.

The tenant testified that after the tenancy ended, the rental unit remained vacant for quite some time but it was not demolished and the property has not yet been redeveloped. Rather, the house endured two fires and the City eventually tore the house down after the second fire and after the tenant filed the Application for Dispute Resolution.

The landlord confirmed the house remained vacant and he did not have it demolished but the landlord pointed out that the Notice did not indicate the house was going to be demolished. The landlord confirmed that there had been a fire in the house and the City tore the house down.

The landlord submitted that the Notice provides that the landlord will be redeveloping the property and that the landlord was and is still actively pursuing a redevelopment permit for the property. The landlord testified that when he applied for the redevelopment permit in February 2019, he thought it would be approved in 6 – 8 months but that it has taken much longer than anticipated. The landlord submitted that there have been multiple consultations with architects and the City but that until a

building permit is issued, the City will not issue a redevelopment permit. Nevertheless, the building permit and the redevelopment permit applications have been filed with the City and are still being reviewed and pending approval.

The tenant is of the position the landlord issued the Notice in bad faith because he did not have permits and approvals in place at the time the Notice was issued to demolish or redevelop the property; the landlord has not yet redeveloped the property as indicated on the Notice; the landlord's compensation payment was less than that required by the City and, the house was only torn down after two fires and the tenant filed her claim against the landlord. The tenant pointed to the requirements of section 49.2 of the Act and the corresponding compensation provision of section 51.4.

The landlord was of the position that the tenant is not entitled to further compensation. The landlord did not indicate he was going to demolish the rental unit in the Notice he served. The Notice he served indicates the landlord is redeveloping the property and the landlord has and is still actively pursuing redevelopment of the property. The landlord offered compensation to the tenants to bring the tenancy to an end which the tenant(s) accepted and took without any objection or dispute.

Both parties provided a significant amount of documentary and photographic evidence for my review, all of which was admitted and I have considered.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

The crux of this dispute revolves around the way in which the tenancy ended and what the landlord did or did not do with the property after the tenancy ended.

In making her arguments, the tenant pointed to section 49.2 and 51.4 of the Act. Section 49.2 provides a mechanism for a landlord to apply to the Director for an order to end the tenancy to perform repairs or renovations and section 51.4 is the corresponding compensation provision that may apply where the tenancy is ended under section 49.2. However, sections 49.2 and 51.4 were enacted in 2021 and did not exist at the relevant time. Since the Notice was served on July 29, 2019 and the tenancy ended on December 1, 2019, I have relied upon the Act as it was written at those times.

Section 44 of the Act provides for the ways a tenancy ends, as follows:

> **44** (1)A tenancy ends only if one or more of the following applies:
>
> (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
>
> (i)section 45 *[tenant's notice]*;
>
> (i.1)section 45.1 *[tenant's notice: family violence or long-term care]*;
>
> (ii)section 46 *[landlord's notice: non-payment of rent]*;
>
> (iii)section 47 *[landlord's notice: cause]*;
>
> (iv)section 48 *[landlord's notice: end of employment]*;
>
> (v)section 49 *[landlord's notice: landlord's use of property]*;
>
> (vi)section 49.1 *[landlord's notice: tenant ceases to qualify]*;
>
> (vii)section 50 *[tenant may end tenancy early]*;
>
> (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
>
> (c)the landlord and tenant agree in writing to end the tenancy;
>
> (d)the tenant vacates or abandons the rental unit;
>
> (e)the tenancy agreement is frustrated;
>
> (f)the director orders that the tenancy is ended;
>
> (g)the tenancy agreement is a sublease agreement.

[My emphasis underlined]

The Act does not permit a tenancy to end for purposes of “redevelopment” specifically. Rather, subsection 49(6) permitted, at the relevant time, the following reasons for ending the tenancy:

> (6) 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 do any of the following:
>
> (a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
(c) convert the residential property to strata lots under the *Strata Property Act*;
(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
(f) convert the rental unit to a non-residential use.

Subsections 49(7) and (8) of the Act further provide for the notice requirements and the tenant's right to dispute the notice. Below, I have reproduced the relevant portions of subsections 49(7) and (8), with my emphasis underlined.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* …
(8) A tenant may dispute
(a) …
(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

As for notice requirements required under section 52, the Act provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

> (e) when given by a landlord, be in the approved form.
>
> [My emphasis underlined]

To end a tenancy under section 49(6) of the Act, the landlord was required to issue a notice to end tenancy in the approved form, which at the time was a *Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit*. The Notice issued by the landlord on July 29, 2019 was not a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit in the approved form. Nor, did the landlord's notice specify a valid reason for ending a tenancy as "redevelopment" is not specifically a reason for ending a tenancy. Accordingly, the tenancy could not be ended, legally, based on the Notice served by the landlord.

Upon receipt of the landlord's Notice of July 29, 2019 the tenant's remedy would have been to remain in the rental unit without moving or to file an Application for Dispute Resolution to seek an order for the landlord to comply with the Act. Also, the landlord could not have relied upon the July 29, 2019 Notice to obtain an Order of Possession from the Director.

By way of this Application for Dispute Resolution the tenant is seeking compensation that is consistent with that which was provided under section 51(2) of the Act. Section 51(2) of the Act provides compensation payable to the tenant where the tenancy was ended under section 49 of the Act and

> (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.

[My emphasis underlined]

In this case, I have found that "redevelopment", the reason stated on the landlord's Notice, was not a basis for ending the tenancy under section 49 and a Four Month Notice to End Tenancy that meets the form and content requirements of the Act was not issued to the tenant(s) under section 49 of the Act. As such, I find the tenant cannot seek compensation payable under section 51(2) as the tenancy was not ended under section 49 of the Act.

Although the tenant cannot seek compensation payable under section 51 since the tenancy was not ended pursuant to section 49 of the Act, I have considered whether the tenant is entitled to compensation under section 7 of the Act.

A landlord or tenant may make a claim for compensation under section 7 of the Act where there is no other specific compensation provision that applies.

As provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* where a claim is made under section 7 of the Act, I must consider whether the applicant has proven, based on the probabilities:

- the other party violated the tenancy agreement, the Act, or regulations;
- the violation resulted in damages or loss for the party making the claim;
- the applicant can prove the amount of or value of the damage or loss; and
- the applicant acted reasonably to minimize that damage or loss.

[My emphasis underlined]

In the matter before me, neither party gave the other party a valid notice to end tenancy despite section 5(1) of the Act which provides that "Landlords and tenants may not avoid or contract out of this Act or the regulations."

The tenancy was ended without a valid notice to end tenancy being served by either party. When I consider the benefits and consequences of their actions, I am of the view both parties received some benefit and consequence from their decision to bring the tenancy to an end pursuant to the July 29, 2019 Notice that does not comply with the Act. The landlord obtained the benefit of regaining possession of the rental unit. The tenant(s) received compensation equal to $3300.00 [($1150.00 x 2) + $1000.00] by the time the tenancy ended in comparison to one free month that would have been payable under section 51(1) had the tenancy ended with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, or $1150.00. As for consequences, the tenants do not have a remedy to seek additional compensation under section 51(2) of the Act and the landlord suffered loss of rent for several months while awaiting permission to redevelop.

Also of consideration is the applicant's obligation to minimize or mitigate damages or loss. Upon receipt of the July 29, 2019 Notice the tenant could have contacted the Residential Tenancy Branch to determine how a tenancy is legally ended. The tenant could have simply remained in the rental unit and ignored the Notice and there would have been no recourse for the landlord to take further action without first issuing a valid Notice to End Tenancy. Alternatively, the tenant could have filed an Application for Dispute Resolution to seek compliance by the landlord or further certainty that the Notice was invalid. The tenant did none of these things.

In light of all of the above, I find I am not satisfied that the tenant is entitled to compensation equivalent to 12 months of rent, or $11800.00, as claimed against the landlord under section 51(2) or section 7 of the Act. Therefore, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

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: February 23, 2022

Residential Tenancy Branch