



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The rental unit was a stand-alone house. This tenancy began in 2012. The monthly rent for this tenancy was \$1,860.00 payable on the first of each month. The tenancy ended in accordance with the Landlord's Notice to End Tenancy for Landlord's Use dated January 17, 2021 which provides an end of tenancy date of March 31, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the child of the landlord or the landlord's spouse.

The landlord explained that their adult daughter intended to move into the rental unit with their family. The parties agree that instead of doing what was stated on the 2 Month Notice, the rental property was transferred into the name of the landlord's daughter in March 2021 and the property has been demolished. The landlord's child did not occupy the rental unit at any time. The landlords submit that their child intends to construct a new house on the property to occupy.

The landlord made some submissions that their daughter was concerned about asbestos in the building as the tenant performed some unauthorized renovations to the property in 2020 and have decided to demolish the rental unit instead of residing within as stated in the 2 Month Notice.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the

tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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,

The Landlord's Notice to End Tenancy for Landlord's Use of January 17, 2021 provides that the rental unit will be occupied by a close family member, the child of the landlord or the landlord's spouse. The parties agree that the tenancy ended on March 1, 2021 in accordance with the Notice. The parties agree that the landlord's child has never occupied the rental unit and instead the property was transferred to the child and has been demolished. Based on the undisputed evidence I find the rental unit was not used for the stated purpose.

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

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 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that would likely not be considered extenuating.

In the present case I find insufficient evidence that there are any extenuating circumstances that has contributed to the landlord from accomplishing the stated purpose for ending the tenancy.

The landlords' own written submission states that:

In conclusion, the landlords, [landlords] acted in good faith when they served the notice to end tenancy with [the tenant]. Through their estate and tax planning, they completed the process of transferring the property to their daughter [KG] by the end of March 2021. She had added her common-law spouse [son-in-law] on title. From their research, both [KG and son-in-law] deemed that it's more cost effective to build a new house rather than renovating an older one. They are in contract with a builder and part of the process in demolishing a house that was built prior to 1990, a toxicology/hazmat report was ordered and found that there is asbestos in the old house.

As of January 8, 2022, construction on the house has still not started. [KG and son-in-law] are still in the process of finalizing the plans and has taken them longer than expected. The property [rental address] will have a house that [KG and son-in-law] will live in and used by the family, as this has always been the plan.

I find the transfer of the property by the landlords to their family member does not absolve the present respondents from their liability under the *Act*. Landlord is defined in section 1 as including a former landlord, when the context requires. I accept the evidence of the landlords that, at the time they issued the 2 Month Notice, they were the owners in fee simple of the subject rental property. I do not find the landlord's submission that they have no control of the use of the property by their child to be persuasive. I find that the act of transferring title to the property does not shield the landlords from their liabilities under section 51 of the *Act*.

The landlords gave evidence that their transfer of the subject property was part of their ongoing estate planning process. I find little evidence that the choice to transfer title was a result of extenuating circumstances that could not be anticipated or were outside of their control. The landlords' own testimony and submissions is that they always intended to transfer the property to their child. Accordingly, I find no evidence that the deviation from the purpose stated in the 2 Month Notice arises due to extenuating circumstances.

I do not find the submissions of the landlord regarding the unauthorized work done on the rental unit by the tenant during the tenancy to be reasonably considered to be an extenuating circumstance. The evidence is that the work occurred in 2020 prior to the

issuance of the 2 Month Notice. I find little evidence that the nature or quality of the work was inadequate or led to the landlord altering their intended use of the rental property by transferring title and subsequently demolishing the property.

The landlord made some submissions about the presence of asbestos due to the age of the property. I do not find this reason to reasonably be considered extenuating circumstances as the age of the rental property was known by the landlords at the time of the issuance of the 2 Month Notice.

Furthermore, even if I were to find that the condition of the rental unit were an extenuating circumstance that would excuse the landlords from their obligations under the Act, I find insufficient evidence to support that such conditions exist. The written submission of the landlords primarily states that the tenant undertook some work on the rental unit in 2020. I find little evidence that the work was inadequate or resulted in the need for the property to be demolished.

Based on the landlords' own submissions they issued the 2 Month Notice knowing they had intended to transfer the property to their child. The choice to demolish the rental unit rather than use it for the purposes stated on the notice was due to it being "more cost effective".

I find, based on the evidence of the parties, that the landlords did not use the rental unit for the purpose stated on the Notice to End Tenancy for at least 6 months. I find that no extenuating circumstances exist that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the Act.

Consequently, I find that the tenant is entitled to a monetary award of \$22,320.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenant was successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$22,420.00. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 3, 2022

Residential Tenancy Branch