



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation that is equivalent to 12 months rent pursuant to section 51 of the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to ask questions of the other party, and make submissions at the hearing. All parties confirmed under affirmation they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Is the tenant entitled to compensation pursuant to section 51 of the Act?

Background and Evidence

The tenancy began on December 1, 2015. Rent in the amount of \$936.00 was payable on the first of each month. A security deposit of \$437.50 was paid by the tenant. The tenancy ended on July 31, 2019.

The parties agreed that the tenant was served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit (the "Notice" issued on April 28, 2019).

The tenant accepted the Notice and vacated the property on July 31, 2019.

The reasons for ending the tenancy was for Renovation, as set out in the Notice.

The work I am planning to do is detailed in the table below	
Planned Work	Details of Work
	Addressing water issues.
Bathroom remediation	Issue one, to replace all four washroom roof vents, which will in turn negate opening up washroom 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 tenant submits the following in their application,

“ I am requesting compensation of one year's rent, where my rent at the time of eviction was \$936.00/month. Landlord stated renovations needed were sufficient enough to need unit vacated. After further review, eviction notice reasons are not valid enough to require unit to be vacant. In addition, some of stated work has been done while other tenants remained in those units. Other work stated that required power to be shut off to building was not completed”.

[Reproduced as written]

The tenant submits in their application that renovation needed were not sufficient enough to need the rental unit vacant. However, the tenant accepted the Notice and vacated the premises. The Notice clearly sets out if the tenant did not agree with the Notice that they had 30 days to dispute it. I find I do not need to consider this portion of the tenants claim as the tenant accepted the Notice that vacant possession was required.

The only issue for me to determine is did the landlord do the work that was planned in the Notice.

The landlords testified that the building was built in 1967 or 1968 and is a townhouse complex, which shares a roof and foundation. The landlords stated that they had major issues with the water leaking from the roof and water entering the foundation causing damage to the infrastructure and had to do extensive work on the property to remedy

the water issues and protect the integrity of the infrastructure. The landlords stated that the tenant's rental unit was vacant for seven months while the repairs were made.

Bathroom remediation

The landlord testified that the original building was not designed to have fans in the bathroom; however, a previous owner had installed a ventilation system that was not up to code and was disintegrating and water was leaking into the bathroom penetrated the bathroom walls which went all the way down to the kitchen. The landlord stated that they had to remove the existing system and install proper venting through the roof and repair the damaged bathroom. The landlord stated that this remediation took approximately one month. Filed in evidence is a receipt is a receipt dated October 15, 2019, which shows the landlord paid \$9,982.00 for the work performed. Filed in evidence is a receipt which shows the landlord paid \$708.75 to install new bathtub drain, and other items.

The advocate asked the landlord if there is another bathroom in the premises. The landlords indicated there a half bathroom; however, there is no bathtub or shower.,

Storm sewer excavation/Perimeter drainage remediation

The landlords testified that the foundation of the property was failing as water was going through the cinderblocks. The landlord stated that entire foundation had to be exposed and the efflorescence on the interior basement walls foundations removed by sanding, which required the workers to wear hazmat suits as the old paint could have contained carcinogens. The landlord stated that the mortar of the cinderblocks had to be repaired and then a sealant had to be applied. Filed in evidence are photographs

The landlord testified that the old concrete perimeter drainages were cracked and failing and had to be replaced with PVC piping. The landlord stated that the planned work was to replace the existing perimeter drainage. The landlord stated that the perimeter drains were replaced in 2019. Filed in evidence are the labour hours of work invoices for supplies purchased and photographs.

The tenant was questioning the receipts of the landlord. The tenant also question why there is no receipt for hazmat equipment and why is there was a receipt date 2 years after their tenancy had ended for drainage.

The landlord responded that they did not pay for the hazmat equipment as it was provided by the workers. The landlord stated that even after they the work on the

perimeter drains they were still having an issue with water, the landlord stated that the storm drain was utilizing the sewer pipeline, which was unusual, and this had to be fixed and they added more drainage on the property in 2021.

Powerline remediation

The landlords testified that the powerline to the building was going through the fascia board and the weight of the lines were damaging the building as it was pulling the fascia boards off the building and birds were living behind it. The landlord stated that they were able to find a contractor who was able to remove the weight from the building by using 6 or 7 huge grommets on the roof, removing the weight off the exterior wall the landlord stated that this was a huge undertaking. Filed in evidence is a receipt dated October 15, 2019, showing the landlord paid the amount of \$2,017.00 to remove the tension on the main power feed cable and repair the fascia board.

The tenant asked if the power had to be shutdown while the work was done. The landlord stated that they don't believe it was shut off, which they thought was not good. The landlord stated that when the Notice was given it says the power could be shut off as they did not fully know the full extent of the work.

Analysis

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

Section 51 (1.2), (2) and (3) reads before it was amended on January 1, 2021, and effective July 1, 2021, which would apply to this matter as the Notice predates the effective changes in the legislation.

(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.

In this matter the tenant accepted the Notice and vacated the property. The work required was to rectify the major water leaks in the building caused by a ventilation system that was improperly installed by a previous owner and was failing due to the age of the materials used, this causing extensive water damage to the interior of the rental building and there was major leaking in the foundation. This is supported by the photographs.

Bathroom remediation

I am satisfied that the landlord took reasonable steps to accomplish the repair to the ventilation system, this included removing the old ventilation system, installing a new system and repairing the water damage to the bathroom. This is supported by the photographs and invoices.

Storm sewer excavation/Perimeter drainage remediation

I am further satisfied that extensive work was done to the foundation of the building which involved removing the efflorescence off the cinderblocks by sanding, filling and sealing of the existing cinderblocks to stop the water from entering the premises.

I am further satisfied that extensive work was done to the drainage system of the building by replacing the old failing system with a new system. This is supported by photographs and receipts.

While I accept the tenant was concerned with an invoice dated 2021; however, it is not unreasonable for the landlord to continue to make improvements to the property to ensure water is sufficient diverted from the building as the Act states reasonable steps to accomplish, not that it was accomplished as that is the new wording of the legislation that would not apply to this matter.

Powerline remediation

I am further satisfied that the powerline to the building was repaired. The weight of the powerline was removed off the building by large grommets being installed on the roof. Whether the power was required to be shutoff or not for any duration of time would not have been know until the electrician decided on the safety factors.

Based on the above, I am satisfied that the landlord took reasonable step to address the water issues to accomplish the reasons stated in the Notice. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application for compensation 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: February 16, 2022

Residential Tenancy Branch