



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skylark Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord and the agent JS attended (“the landlord”). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties confirmed the email addresses to which the Decision would be sent.

Preliminary Matter - Prohibition Against Recordings

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties submitted a copy of the tenancy agreement. They agreed on the background of the tenancy as follows:

Information	Details
Type of tenancy	Monthly
Beginning date	August 31, 2015
Vacancy date	July 16, 2021
Rent payable on first of month	\$1,687.00
Security deposit	\$800.00
Pet deposit	\$800.00

The parties agreed that the landlord issued a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit in RTB form # 29 as follows:

INFORMATION	DETAILS
Type of Notice	Four Months' Notice
Date of Notice	April 16, 2021
Effective Date of Notice	September 1, 2021
Date and Method of Service	April 16, 2021, personal
Application for Dispute Resolution filed - date	August 30, 2021

A copy of the Four Months' Notice was submitted.

The tenant testified as follows. He lived in the unit with another adult and a child. When he was served with the Notice, he asked the landlord if they could remain in the unit while the renovations were going on. The tenant stated there were extra rooms in the unit and they were willing to do what was necessary to avoid moving out and looking for

alternate accommodation which was likely to be much more expensive. The landlord denied the request stating the work required the tenant to move out.

The tenant received one month's rent as compensation required under the Act.

The tenant did not dispute the Notice. He testified he assumed the landlord was acting in good faith and had no choice but to move out. They moved out July 16, 2021.

The tenant brought this application almost one year later, on August 30, 2021. The tenant said he now believes the Notice was inadequate and an Application for Dispute Resolution for cancellation would have succeeded. The tenant requested that he be awarded compensation under the Act equivalent to twelve months rent.

The tenant based this claim on two arguments. First, the Notice was deficient and therefore invalid. Required information in the form was missing. This information was important and, if provided, would have allowed them to make an informed decision. For example, the time needed for the work.

Secondly, the renovations were not so extensive as to require him to move out. The tenant claimed the landlord evicted them so they could double the rent.

Tenant Claim – Notice is Deficient

With respect to the first argument, that the Notice was deficient and invalid, the tenant referenced the Notice and pointed out the following four key deficiencies or omissions (underlining added):

1. The standard RTB Notice includes a section labelled, "I am ending your tenancy because I am going to: (check a box that applies)." There are several options. The landlord selected the following option *without* circling a selection (underlining added):

Perform renovations or repairs that are so extensive that the rental unit must be vacant. Indicate how many anticipated weeks/months (please circle one) the unit is required to be vacant.

Therefore, the tenant claimed he was not told of the time the landlord predicted for the completion of the work. This was essential information needed to make an informed decision of whether to accept the Notice.

2. Secondly, the box is not checked on the Notice for the following statement:

☐ I have obtained all permits and approvals required by law to do this work.

The tenant explained that the landlord failed to inform them that the work was ready to begin. He testified that he learned from the municipality that the landlord did *not* obtain the necessary permits except for an electrical permit.

Therefore, the tenant was not provided with key information about the extent and nature of the renovations.

3. Thirdly, the tenant claimed the box is not checked on the Notice for the following statement:

☐ No permits and approvals are required by law to do this work.

Therefore, the tenant was not informed of what permits were necessary, if any, , thereby depriving him of important facts necessary to decide whether to accept the Notice.

4. Finally, the tenant claimed the table in the Notice with the following two headings is not filled in:

Planned Work

Details of work (If you are ending the tenancy for renovations or repairs, explain why the renovations or repairs required the rental unit to be vacant)

The tenant asserted that without a description of the work and an explanation from the landlord why the renovations required them to move out, they were denied critical information needed to decide whether to dispute the Notice.

The tenant testified that when the landlord served him with the Notice he asked to remain in the unit while the work took place. The tenant explained there were spare rooms where the family could live so that they did not have to move out. The landlord denied the request saying the work was extensive and the family could not live there while it was taking place. The landlord also denied there were extra rooms suitable for a family to live in.

In summary, the tenant claimed that the defects and omissions in the Notice made it void and ineffective. The deficiencies led to their misinterpretation and misunderstanding of the nature of the work being undertaken, the time the renovations would take, and the feasibility of the tenant remaining in the unit. The tenant testified they would have disputed the Notice and would not have agreed to move out if the landlord had properly completed the form. They would not have incurred the expense and inconvenience of moving to a more expensive place.

Tenant claim – Cosmetic Renovations

With respect to their second argument, the tenant testified that he observed the unit throughout the renovations when walking by. He saw the landlord's photos submitted as evidence.

The tenant testified as follows. He saw the exterior of the unit and portions of the interior through the windows. He noticed new windows, new flooring and a new basement suite where none existed before. The tenant is of the opinion that there was no valid reason for them to have vacated the unit and that the renovations were primarily cosmetic. The renovations updated the unit but there was no major work on the structure which would require the unit to be vacant. For example, there was no major plumbing work or removal of walls.

The landlord submitted a 74-page written document package containing several receipts and photographs of the work in progress and currently. One of the receipts was for more than \$42,000.00 for renovations.

The landlord testified as follows. The work involved the removal of drywall, walls, flooring and windows. Living in the unit would have been impossible while the work took place. The landlord denied that the renovations were cosmetic. No permits other than the electrical permit were necessary, not because the renovations were not extensive, but because the nature of the work could take place without permits. The unit was

renovated throughout; a new suite was built in the basement involving structural elements such as plumbing and electrical. Extensive work is still ongoing and completion has been delayed because of other circumstances, such as availability of labour and products.

The tenant seeks a Monetary Order of twelve times the rent pursuant to section 51 and reimbursement of the filing fee.

The landlord requested the claim be dismissed.

Analysis

Not all evidence submitted by the parties is referenced in the Decision. I only refer to key facts and findings upon which my Decision is based. Reference is to applicable sections of the Act that were in effect.

The Act required a landlord to give four months' notice to end a tenancy under section 49(6) (demolition, renovation or repair, conversion).

Section 49(6) stated as follows (in part, emphasis added):

(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) ...

If the landlord does not comply with sections 49(6), the tenant may apply under section 51(2) for compensation equivalent of 12 times the monthly rent payable under the tenancy agreement.

The Act at the time the Notice was issued contained section 51 (1.1) and (1.2). These sections were added by 2006-35-73, effective October 1, 2006 (BC Reg 234/2006).

Section 51(2) is key to this application and the section stated as follows:

(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.

The Notice provided that the tenant could file an application to dispute the Notice within 30 days of receipt. The tenant did not do so.

Section 49 of the Act provided that if the tenant does not make an application for dispute resolution, they are *conclusively presumed to have accepted that the tenancy ends on the effective date of the notice* and must vacate the rental unit by that date. The Act states as follows:

Landlord's notice: landlord's use of property

(9) If a tenant who has received a notice under this section does not apply for arbitration in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find the tenant did not apply for arbitration in accordance with the Act and is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I accept the landlord's documentary evidence and testimony. I find the landlord took steps, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy, that is, to perform renovations or repairs that are so extensive that the rental unit must be vacant.

As a result, I find the tenant has failed to meet the burden of proof on a balance of probabilities that the landlord did not comply with section 51(2).

I therefore dismiss the tenant's claim without leave to reapply.

Conclusion

The tenant's claim 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: March 21, 2022

Residential Tenancy Branch