



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence and that they are not using a recording device for the hearing.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement for a house started on December 1, 2016 and ended on September 30, 2021. Rent of \$3,700.00 was payable on the first day of each month. The tenancy ended pursuant to a 2 month notice to end tenancy for landlord’s use dated July 29, 2021 (the “Notice”).

The reason on the Notice is that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give notice to end the tenancy because the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. The Respondents gave the landlord this request

in writing, noting that the conditions for the sale were satisfied on July 22, 2021 and this request was attached to the Notice.

The Tenant states that after the end of the tenancy the Respondent the Landlord did major renovations to the unit. The Tenant does not dispute that the Respondent was fully moved into the unit as the Respondents' residence on February 25, 2022. The Tenant argues however that the Respondents did not occupy the unit within a reasonable period from the effective date of the Notice and that given the renovations the Tenants should have been given a 4 month notice to end tenancy for renovations instead of the two-month Notice.

The Respondent states that after the purchase of the unit and on October 19, 2021 asbestos was found in the walls of the unit and significant work was required to the unit to remediate the asbestos prior to any other renovation work. The Respondent states that when the unit was purchased, they knew some renovation work was required however they were not aware of the asbestos or the presence of wiring that was no longer up to code and required replacement. The Respondent states that the asbestos remedial work required the entire house to be enclosed and walls were cut into. The Respondent states that the work involving the wiring and asbestos was not planned for. The Respondent states that the remediation for the asbestos was complete at the end of November 2021 and the electrical work that started at the end of November 2021 was completed in stages with the final work completed in mid February 2022. The Respondent states that the reinsulating of the unit was completed in mid- December 2021. The Respondent states that the drywall work to replace the walls was done over the month of January 2022. The Respondent states that due to COVID workplace requirements subtrade workers would only work with their own group causing delays in the work as well. The Respondent states that prior to moving into the unit they were paying rent at another location and were eager to move into the unit as soon as possible. The Respondent states that they started to move some items into the unit basement in January 2022 as the upper floors were still being worked on.

The Tenant states that before they were given the Notice the Respondent came to the unit with contractors and informed the Tenant that they would be renovating the unit. The Tenant states that they had doubts about the intentions of the Respondent to occupy the unit as soon as was reasonably possible and asked the real estate agent for a 4-month notice to end tenancy for renovations. The Tenant states that they were informed that the Respondents did not agree to wait for a 4-month notice. The Tenant states that on November 4, 2021 they observed that the carpets had been removed from the unit and that toilets were on the lawn. The Tenant states that on January 17, 2022 a contractor at the unit allowed the Tenant inside the unit and the Tenant noted that a bedroom had been renovated to include a walk-in closet and that other cosmetic renovations were being done. The Tenant argues that the delay in occupying the unit was unreasonable because the asbestos work was done in November 2021 and that as the remaining work was cosmetic in nature as it involved bathroom and flooring renovations the Respondents should have reasonably been able to occupy the unit immediately after the asbestos removal or no later than December 2021. The Tenant states that all the invoices provided by the Respondent for this dispute indicated that nothing was done in January 2022. The Tenant states that the entire unit was gutted before the asbestos work was done. The Tenant refers to a photo taken on November 4, 2021 that shows "stuff" on the ground.

The Respondent states that the Tenant was not given permission to enter the unit and that any photos taken without such permission should not be allowed for consideration. The Tenant states that they only entered the unit on January 17, 2022 and that the contractor at the unit gave them permission to enter the unit. The Tenant states that the Respondent had called the police on the matter and the Tenants were told they did nothing wrong in entering the unit. The Respondents' Witness, the general contractor, states that they were not present when the Tenant entered the unit.

The Respondent states that the carpets were removed as they were in very bad shape. The Respondent states that they still have the same flooring and that the bulk of the plaster that had not required removal remains as well. The Respondent states that the kitchen and hall tiling were also not changed. The Respondent states that they only did the renovations that were required and that they have a right to make renovations that they wanted. The Respondent states that under current regulations once asbestos is found a renovation project can be shut down if not done properly.

Analysis

Section 49(2) of the Act provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- (b) the renovations or repairs require the rental unit to be vacant;
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

The Tenants argue that they should have been given a 4-month notice given the extent of the renovations that took place. However, nothing was pointed out in the Act that requires a landlord to provide a 4 month notice where a purchaser plans to renovate before occupying the unit. As the above section is only available to landlords who intend to make renovations and not purchasers, I consider that this argument is not relevant to the dispute at hand.

Section 51(2) of the Act provides that the purchaser who asked the landlord to give the notice must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the purchaser does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the Act provides that the director may excuse 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 purchaser from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49
- (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

There is no dispute that Respondents occupied the unit for residential purposes for at least 6 month's duration from at least February 25, 2022. This occupation approximately 5 months from September 30, 2021, the effective date of the Notice.

There is no dispute that prior to the Notice being issued the Respondents intended to make renovations to the unit. There is nothing in the Act that prevents a purchaser of a rental unit from undertaking renovations prior to their occupation of that unit as their residence.

It is undisputed that in October 2021 the unit was found to require major work in relation to asbestos and the wiring that was not previously known. The Tenants argue that the Respondents could reasonably have occupied the unit by December 2021 after the asbestos remediation as the remaining work was cosmetic in nature however it is undisputed that the wiring took until February 2022 to complete. I do not consider wiring to be cosmetic. I also consider the undisputed evidence of COVID presenting delays in the work done to the unit. There is no evidence to dispute the necessity of the asbestos and wiring work. Given the Respondents' supported evidence of renovation

work being done past January 2022, including the wiring, and the undisputed evidence of the Landlord starting to move into the unit in January 2022 with a complete move by February 25, 2022 I find on a balance of probabilities that the Respondents did occupy the unit as soon as was reasonably possible. As the purpose for the Notice has been found to be accomplished, there is no need to consider extenuating circumstances that prevented such accomplishment. For these reasons I dismiss the Tenants' claim for compensation. As the Tenants have not been successful, I also dismiss their claim for recovery of the filing fee and in effect, their application is dismissed in its entirety.

Conclusion

The 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 Act.

Dated: November 29, 2022

Residential Tenancy Branch