



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

C.S. appeared as the Tenant. Counsel, D.M., represented the Landlord. P.B. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials. The Tenant indicates that she received the Landlord’s evidence after the deadline for service, though confirmed she had sufficient time to review the materials and was prepared to proceed. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on April 1, 2017.
- The Landlord obtained vacant possession of the rental unit on October 31, 2021.
- Rent of \$2,600.00 was payable on the first day of each month.

The parties provided a copy of the tenancy agreement in their evidence.

I am advised by the parties that the Landlord issued a Four-Month Notice to End Tenancy on the Tenant so that the rental unit could be demolished (the "Four-Month Notice"). The parties have provided me a copy of the Four-Month Notice, which shows it was signed on August 6, 2021 and had an effective date of December 31, 2022.

Both parties provide me with a notice from the Tenant dated October 1, 2021 in which the Tenant gives the Landlord written notice that she would be vacating on October 31, 2021 and that this was done "in accordance with the eviction notice [she] received, dated August 6, 2021, for the purposes of demoing (sic) the structure".

Landlord's counsel advised that prior to issuing the Four-Month Notice, the Landlord retained an arborist as per municipal bylaw requirements. I was directed to a comfort letter for the arborist in the Landlord's evidence dated April 22, 2021. I was also provided with a copy a demolition permit for the rental unit issued by the municipality on July 30, 2021.

Landlord's counsel advised that after the Tenant vacated the rental unit, it took the Landlord some time to retain a contractor to demolish the rental unit. I am further advised that asbestos remediation was required prior to demolition. Landlord's counsel directs me to a letter dated December 31, 2021 in the Landlord's evidence detailing that asbestos testing was conducted at that time. The Landlord's evidence also includes a pre-demolition report dated January 4, 2022 with respect to the asbestos at the property, which indicated that the property was "not safe for demolition all asbestos must be removed before demolition".

I am advised by counsel that the Landlord disconnected utility services in January 2022 and includes in its evidence confirmation that BC Hydro disconnected the service on January 7, 2022. Counsel advises that Worksafe BC issued a stop work order during the demolition process, though I have not been provided with any documentation on this point. The Landlord's evidence includes a copy of a Worksafe BC report permitting the remediation to commence by March 8, 2022. I am advised that the asbestos remediation was completed by March 20, 2022, with this being confirmed by a post-abatement report in the Landlord's evidence as well as an invoice from the asbestos remediation contractor.

The Landlord's evidence also includes an email from the Landlord to the demolition contractor on April 28, 2022 which states the following:

As per our telephone conversations regarding the above property. The house has still not been demolished. Please demolish as soon as possible.

The hydro and gas have been disconnected since January 2022. All doors, cabinets, appliances, furnace, metal, fixtures have been removed. The hazardous material, asbestos was removed as of March 25, 2022 and approved by WorkSafe B.C. Inspector.

Please let me know when you will be doing the demolition.

I am told by Landlord's counsel that the residential property was demolished in May 2022, with a report from the arborist and an invoice from the demolition contractor indicating it took place on May 9, 2022. Landlord's counsel further advised that the residential property, which is on a larger lot, has been leased by the Landlord to the adjacent property owner to store additional commercial items.

The Tenant confirmed the rental unit was demolished in May 2022 but argued that the Landlord did not issue the Four-Month Notice in good faith. I am directed to a series of notices to end tenancy served by the Landlord prior to the end of the tenancy. The Tenant's evidence also includes decisions from previous disputes between the parties at the Residential Tenancy Branch.

The Tenant testified that the Landlord permitted the adjacent property owner to use the residential property for storage no less than four days after the end of the tenancy and argued that this further demonstrated the Landlord's bad faith. I have been provided

with video from the Tenant showing the rental unit intact, but the adjacent property already converted to use as commercial storage. The Tenant argued that the Landlord was just trying to get her off the property to convert the space for commercial use. The Tenant further testified that she leases animals to the film industry and that the Four-Month Notice prevented her from being able to make use of the property for her own purposes.

Analysis

The Tenant seeks compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

In this instance, the Four-Month Notice was issued under s. 49(6)(a) of the *Act* for the demolition of the rental unit. In other words, the Landlord must demonstrate that the rental unit was demolished within a reasonable time after the effective date of the Four-Month Notice. The second portion of s. 51(2) of the *Act*, being that rental unit be used for the stated purpose for at least 6 months, is irrelevant here as demolition tends to be permanent in its duration.

There is no contention here that the rental unit was demolished in May 2022. The issue is whether this was done within a reasonable period after the effective date of the notice to end tenancy. By reference to the wording of s. 51(2) of the *Act*, the start point for the “reasonable period” is the effective date of the notice, rather than the date the tenancy ended. In other words, the Landlord must demonstrate it demolished the rental unit within a reasonable period from December 31, 2021.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act*. It states the following with respect to what is considered a reasonable period:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

In this instance, the Landlord's evidence clearly demonstrates that it was taking steps to demolish the rental unit prior to December 31, 2021. Utility services were disconnected in January 2022. Asbestos testing was done, and recommendations were made on January 4, 2022 that the asbestos would need to be removed prior to the demolition. Policy Guideline #50 suggests that a reasonable period for demolition to be relatively short. However, I find that guidance to be less helpful here as it does not contemplate the unexpected challenge posed by the need to remediate the asbestos at the property prior to its demolition.

I accept that this a longer process than what the Landlord had anticipated. The Landlord's evidence includes a Worksafe BC permit to commence the work at the beginning of March 2022 and the remediation being completed on March 20, 2022 with Worksafe BC signing off on March 25, 2022. The Landlord's evidence includes the email of April 28, 2022 showing that the Landlord was attempting to get the rental unit demolished but was unable to move forward in a timely fashion given issues of timing with contractors.

The Tenant argues that the Landlord acted in bad faith in issuing the Four-Month Notice. This argument is irrelevant to considering whether the Tenant is entitled to compensation under s. 51(2) of the *Act*. The wording of that section makes no reference to good faith as questions of good faith are only relevant if the Tenant had filed an application to cancel the Four-Month Notice, which did not occur here. The Tenant accepted the Four-Month Notice and moved out, which is clear by reference to her notice to the Landlord dated October 1, 2021.

The Tenant argues that the Landlord started renting the land to the adjacent property owner a mere four days after the tenancy ended. This is again irrelevant to the analysis. There is no contention that the Landlord rented the rental unit to a new tenant for

residential purposes, which may be relevant insofar as it would show the Landlord failed to fulfil the purpose stated within the notice within a reasonable period. However, that did not occur and it is difficult to conceive how that would be possible given that the Landlord's evidence demonstrates that the utility services were cut-off in January 2022. I would further add that it seems to be entirely reasonable for a landlord, who owns a large property which can be put to commercial use, to earn rental income from the adjacent land after the residential tenancy has ended.

The Tenant argued that she was deprived of the ability to make use of the property for her own business. What the Tenant fails to appreciate from this argument is that she is not the property owner and that her rights to the property were limited by the tenancy agreement. The tenancy came to an end on October 31, 2021 after the Landlord issued the Four-Month Notice, which the Tenant accepted.

I find that the Landlord has demonstrated that the rental unit was demolished within a reasonable period of the effective notice upon consideration of the delays presented by the asbestos remediation and the timing to get someone onsite to knock the building down. The Tenant's application is dismissed.

Conclusion

The Tenant's application for compensation pursuant to s. 51(2) of the *Act* is dismissed without leave to reapply.

The Tenant was unsuccessful in her application. I find that she is not entitled to the return of her filing fee. Her claim under s. 72(1) of the *Act* 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: December 06, 2022

Residential Tenancy Branch