



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 an Application for Dispute Resolution by the tenant(s) filed under the *Residential Tenancy Act* (the “Act”) for compensation because the landlord ended the tenancy and has not complied with the Act or use the rental unit for the stated purpose.

This matter commenced on May 13, 2022 and was adjourned at the request of the tenant’s legal counsel. The interim decision dated May 13, 2022, should be read in conjunction with this Decision

On November 15th, 2022, both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

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

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue to be Decided

Is the tenant entitled to compensation pursuant to section 51(2) of the Act?

Background and Evidence

The tenancy began on October 1, 2018. Rent in the amount of \$3,965.00 was payable on the first of each month. A security deposit of \$1,982.50 was paid by the tenants.

The parties attended a hearing on January 20, 2020, as the tenants had disputed a Four Month Notice to End Tenancy for Demolition, Renovations, Repair or Conversion of Rental Unit (the "Notice"), which is subject to this hearing. At the hearing, the tenants withdrew their application to dispute the Notice and the landlord was granted an order of possession effective February 29, 2020.

The reason for ending the tenancy within the Notice is:

I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant.

I have obtained all permits and approval required by law to do this work. The Notice proved an electric permit.

Other work planning to do that do not require permits, insulation, and replace plaster.

Tenant's opening statement

Counsel for the tenants submit since vacating the rental unit on or about February 29, 2020, approximately seven (7) months before the fixed term of the Agreement was set to expire, the Landlords by their own admission during the hearing of the Landlords' Second Monetary Claim did not take any steps to perform the renovations listed in the Renoviction Notice. Instead, the landlords have moved into the Rental Unit themselves and have therefore improperly evicted the Tenants.

Counsel for the tenant submits even by March 1, 2021, a year after the tenants had been evicted pursuant to the Notice, the landlords remain living in the rental unit and it does not appear that any of the alleged renovations were performed, either in part or at all.

Counsel for the tenants submits the tenants are seeking compensation pursuant to 51(2) for the equivalent of 12 times the monthly rent payable under the tenancy agreement, totaling \$47,580.00.

Landlord's submission

Counsel for the landlord submits that the landlords did do the repairs and were completed in a reasonable period given the lockdown as a result of Covid 19.

Counsel for the landlord stated that this was a heritage home and the landlord made it clear to the tenants that they could not make any changes to rental unit.

Counsel for landlord stated that during an inspection on September 18, 2019, the landlord discover that the tenant made several changes to the rental unit, which was contrary to the tenancy agreement. Counsel stated that the tenant had removed the existing heritage light and rewired the electrical cord, and the cords did not fit a non-CSA approved wiring which was 117-year-old knob and tube wiring from when the premises was originally built.

Counsel for the landlord stated that when the landlord saw these changes they were concerned that this would cause a fire and the landlord contacted an electrician who informed the landlord that all the knob and tube wiring should be removed as soon as possible and upgraded to present electrical code to eliminate risk of electrical fire. Filed in evidence is a letter dated December 19, 2019, from the electrician.

Counsel for the landlord submits on September 23, 2019, the landlord had the electrician apply for the electrical permit, which was issued on October 8, 2019. Counsels submits the had to obtained prior to issuing the Notice, as required by the Act. Filed in evidence is a copy of the electrical permit.

Counsel for the landlord submits that on October 31, 2019, the landlord served the tenants with the Notice, for the required work of the electrical upgrade, insulating and replastering of the walls and the tenants vacated on February 29, 2020, in accordance with an order of possession.

Counsel for the landlord submits that on March 17, 2020, the BC government declared a state of emergency which resulted in restrictions until the end of May 2020. As a result of the pandemic the landlord had sustained a financial hit as they had to shutdown their business and there were delays in construction.

Counsel for the landlord submits that the landlord started preparing the house for the electrician, which included purchasing the new electrical panel on May 25, 2020. Counsel submits on June 9, 2020, the electrician began the electrical upgraded.

Counsel submits that the electrician would given instruction to the landlord were holes needed to be drilled, in the wood framing and ceiling that were necessary for the new wiring. One that was completed by the landlord, the electrician would come in afterwards to do the wiring room by room.

Counsel submits that the electrical work continued into September 2020. Filed in evidence are pictures of the work being done. Filed in evidence is an invoice dated August 13, 2020, which shows the electrician attended the premises on multiple dates between June 9, 2022, and July 24, 2020. Filed in evidence is an invoice dated September 14, 2020, which shows the electrician attended the premises on multiple dates between August 26, 2020, and September 2, 2020.

Counsel for the landlords submits that in August 2020 the landlord began the insulation work and began repairing the holes in the walls and ceiling. Plaster on the stairwell began in October 2020. Filed in evidence is an invoice dated August 17, 2020, from a company who had insulated the premises. Filed in an invoice dated October 10, 2020, from a company who had filed holes and repaired the plaster.

Counsel for the landlord submits that the landlords did not live in the rental unit during the repairs. Counsel for the landlord submits that the landlords rented a home on one of the Islands off the mainland and they were issued by their own landlord a notice to end tenancy on July 30, 2020, with an effective date of September 30, 2020. Counsel submits that the male landlord would stay with family members while overseeing and making repairs to the rental unit. Filed in evidence is a letter dated April 22, 2022, from DM and DJ indicated that the male landlord was staying in their spare room between March 2020 and October 2020. Filed in evidence is a copy of a notice to end tenancy d dated July 30, 2020, with an effective date of September 30, 2020. This shows the landlords were tenant and their tenancy was ending.

Counsel for the landlord submits that in the tenant's submission they indicated that the work should have been started on February 28, 2020 and completed by September 2020. Counsel submits that the work was completed within the time period and was a reasonable period considering the pandemic that was unexpected which did make a lot of delays and the landlord assisted as much as possible in making the repairs.

Counsel for the landlord submits that they do not understand the tenant's submission that the landlord allegedly indicated that the work was never completed. Counsel

submits that clearly the work was completed, which is supported by photographs and other documentary evidence.

Cross Examination of the landlord by counsel for the tenants.

Counsel for the tenants question the landlords regarding evidence that was presented at a hearing held on December 8, 2020, and March 1, 2020, which related to the landlord's claim for cleaning costs and damages to the rental unit.

Counsel asked the landlords that if repairs were made to the rental unit before the hearing referred to above, why did they only submit estimates for damages and not the actual invoices. The landlords responded because that hearing was based on damages caused by the tenants, and they had estimates provided that was strictly related to those damages and not for the work performed in the Notice.

Counsel for the tenants question the landlord that at the last hearing did you not state no work had been done. The landlord stated that does not make any sense as the work had been done. The landlord stated that maybe there were referring to some other work that had not been done.

Tenant's submission

Counsel for the tenants submit it is the tenants' position that the renovations were not in fact urgent, nor did they require the tenants vacating the rental unit, because shortly after the tenants vacated the rental unit, the landlords did not begin renovations pursuant to the Notice and instead appeared to have moved into the rental unit themselves.

Counsel for the tenants submit that assuming that the renovations were performed, then the landlords conducted them while living in the rental unit themselves would demonstrate that the alleged renovations did not require the vacant possession of the rental unit.

Counsel for the tenants submits the tenants fail to see how the renovations or repairs were so urgently needed to prolong or sustain the use of the rental unit when this issue only arose once the tenants' raised issues with their tenancy.

Counsel for the tenants submits regarding the last part of the legal test, it is the Tenants' respectful submission that there were numerous other ways to accomplish the

landlords' purposes identified in the Notice, most of which did not require the landlords to evict the tenants before the end of the fixed term of the tenancy agreement.

In summary, it is the tenants' respectful submission that the landlords have failed to evict the tenants in good faith, that the renovations contemplated in the Notice were not so extensive to require the tenants to vacate the rental unit, and that the landlords have equally not satisfied the purpose of the Notice either in part or at all within a reasonable period of time.

For all of these reasons, the tenants seek an order for compensation in the sum of \$47,580.00, being the equivalent of 12 times the monthly rent payable under the parties' tenancy agreement, for the landlord's failure to accomplish the stated purpose for ending the parties' tenancy at all, or within a reasonable period after the eviction.

Analysis

Section 51 (2) of the Act states before amended in 2021 reads:

(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.

Residential Tenancy Policy Guideline #50 (PG 50) Compensation for Ending a Tenancy as written at the time the Notice was issued addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that if a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

PG 50 further states a landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are so extensive that the rental unit must be vacant in order for them to be carried out, and the only manner to achieve that vacancy is by ending the tenancy. If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

With respect to extenuating circumstances, the Guideline provides the following: An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit.

Based on all of the above, the evidence and testimony from the tenant and landlords, and on a balance of probabilities, I find as follows

The tenancy ended based on the Notice and the landlord was granted an order of possession effective February 29, 2020. While the tenants may have been under a fixed term tenancy agreement which had not yet expired. However, the tenant's counsel should have brought that to the attention of the Arbitrator at the hearing on January 20, 2020, because under section 53 of the Act, the effective date in the Notice would automatically correct to the earliest date permitted under the Act.

I accept the parties have had multiple other disputes. However, the only issue I must consider is whether or not the landlord met their obligation under section 51 of the Act.

In this case, the work to be done under the electrical permit was to have the old knob and tube wiring, which was 117 years old, disconnected and have the entire premises rewired. Clearly this was reasonable as the 117-year-old wiring was past its useful life span.

On March 17, 2020, approximately 17 days after the tenancy ended the government issued a state of emergency order, and public health orders were issued. These had significant impacts, and it was reasonable that the work was delayed due to the public health orders.

On June 9, 2020, the electrician who obtained the permit on October 8, 2019, commenced the electrical work stated within the Notice. The invoices support the electrician was at the premises multiple dates throughout June, July, August and was completed in September 2020. The landlord was also performing work by following the instructions of the electrician by cutting the necessary holes that were needed for the electrician to pull the new wiring. I find that is reasonable given the state of the economy and in any event the landlord is entitled to do repairs. This is also supported by photographs taken during this time. Based on this I am satisfied that the landlord took reasonable steps within a reasonable period given the state of emergency to accomplish the electrical rewiring.

In August 2020, the landlord had the walls insulated and the holes from the wiring and plaster repaired. This is supported by the invoices and photographs. I find the landlord took reasonable steps to accomplish the insulation and repairs to the walls.

While I accept legal counsel questioned the credibility of the landlord because the landlord provided estimates for damages at a previous hearing and not the actual invoices, which were available at the time. However, I accept the landlord's response that the estimates were provided by the electrician for what they had determine was the estimated cost for damage caused by the tenants. Further, I can put little weight on a comment made at a previous hearing without knowing the entire context, it would make no sense for the landlord to indicate no work had been done, when the invoices and dated photographs prove otherwise.

The tenant's counsel submits that the landlords moved into the premises in their submission; however, there was no evidence presented on how they determined this to be the case. Further, the landlords were under their own tenancy agreement, and they were served with a notice to end tenancy dated July 30, 2020, this show the landlords had to be living at the rental unit to which they have been renting at that time. Also, I

find it was not unreasonable for the male landlord to be at the home making repairs and staying with a near by family members. The letter of DM and DJ support this. Further, the photographs clearly show the home was not liveable and vacant possession was required.

I find the landlords did meet their obligations under the Notice as they accomplished the stated reasons for ending the tenancy. While I accept the project was delayed; however, given the circumstance of the state of emergency that was declared on March 17, 2020, just 17 days after the tenancy ended is an extenuating circumstance. Therefore, I find I must dismiss the tenants' application for compensation.

Conclusion

I find the landlords did accomplish the stated reasons within the Notice. I find I must dismiss the tenants' application 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 12, 2022

Residential Tenancy Branch