



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$15,240.00 for compensation for monetary loss or other money owing.

The Tenant, the Landlord, and counsel for the Landlord, V.R. ("Counsel") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2015, with a (final) monthly rent of \$1,270.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$550.00, and no pet damage deposit. They also agreed that the Landlord returned the security deposit to the Tenant in full when they did the inspection of the condition of the rental unit at the end of the tenancy.

The Landlord served the Tenant with the Four Month Notice, which was not signed or dated, but which has the rental unit address. The validity of the Four Month Notice is not an issue before me.

In the hearing, the Parties agreed that the Landlord served the Tenant with the Four Month Notice by taping it to the rental unit door on April 2, 2022. It had an effective vacancy date of August 31, 2021. They agreed that it was served on the grounds that the Landlord planned to perform renovations or repairs that were so extensive that the rental unit must be vacant. In the “planned work” section of the Four Month Notice, the Landlord wrote:

The rental unit downstairs will cease to exist in its current form, and the layout and structure of the entire premises will be completely and irrevocably changed. The unit will be converted from a multi-tenant dwelling into a Single Family Residence. The planned construction will likely take at least 5 – 6 months.

In the hearing the Tenant said

Simply going under section 49 of the notice - he's in violation of that - his intended timeline which he quoted was five to six months, but after seven months, nothing is being done. But from what I could tell, there was nothing completed for likely 15 months.

It was extremely inconvenient to move with my 12-year-old daughter in a

pandemic, and with housing prices so high. It resulted in me paying a much higher rent, moving costs, time off work, and so forth, when it was going to sit there for six to seven months. There was no reason we couldn't have continued living there. There was no work done until after seven months. The fact that we received the renoviction notice, and he said he intended to rent the whole house as a singular unit, and then he turned around and sold it.

No permits had been obtained at the time of renoviction, other than a gas permit, but no building permit - nothing else - which is contradiction of [section] 49 (6) [of the Act], which says those permits are supposed to be in hand prior to any renoviction. I provided a letter from [the municipality], saying no permits had been applied for, and that was a month or two after I filed.

Contrary to Counsel's letter – no ill will – there's a back story, because the timing was suspicious. He served me with it 19 days after he had lost an earlier arbitration - he had lost to me. And there were a couple other minor conflicts; I believe it was a vindictive eviction.

Counsel responded, as follows:

The Four Month Notice took effect on August 31, 2021. There was no ill will; [the Landlord] was just getting on with his life.

The rental unit downstairs will cease to exist ... [the Landlord] changed it to a single family residence. He said that the planned construction would likely take five to six months. The letter in Schedule A dated April 2, 2021 – pages one to six of that letter outlined the current unit. It's a split unit, four-bedroom house. He turned it into a single residence with three bedrooms.

The letter dated April 2, 2021, is six pages long from Counsel to the Tenant, on behalf of the Landlord ("Letter"). This includes the following [all emphasis from original]:

[The Landlord] is the sole owner named on the deed and mortgage for the Premises. The Premises consists of two floors, one upstairs and one downstairs. Currently, each floor has 2 bedrooms, a bathroom, a kitchen, and an adjoining living room space. [The Landlord] currently lives the upstairs unit, while ... (the "Tenant") lives in the downstairs unit as a tenant.

The entire Premises will be completely renovated, turning from a split-unit 4

bedroom house into a single rental unit consisting of only 3 bedrooms. Hence, rather than two separate suites, the entire home will be one complete unit. [The Landlord] himself will cease living in the upstairs unit, as discussed below. His intention is to rent the entire premises to a family of 3 to 5 individuals, whereas he is currently only renting the downstairs unit to a single individual. Consequently, to bring about this change, [the Landlord] will carry out extensive major construction and renovations that will necessitate the vacancy of the Tenant's unit.

Such renovations and the necessary vacancy, described in detail below, will take approximately 5-6 months to complete. [The Landlord], being a semi-retired gentleman, will be spending a significant portion of his income and savings on this project. He has no pension other than OAS and a small CPP. He will consequently carry out much of the manual labor himself, wherever possible, and this may drag the construction on even longer than 5-6 months.

On the lower floor where the Tenant's unit is located, the unit will cease to exist in its current form. .

The Letter then lists 23 points detailing the changes that will take place in the former rental unit, and seven points identifying changes made to the upper level of the residential property.

The Letter continues:

As the above summary and the attached plans indicate, this is an extensive, major construction project that will take quite some time to complete.

[The Landlord] has prepared all of the plans for this work and has obtained all of the relevant permits from the proper authorities. He has retained [B.] Plumbing to carry out the gas and water-related work, and they have obtained the necessary gas and plumbing permits. Technical Safety BC has issued a Gas Installation Permit, and the [municipality] has issued the Plumbing Permit.

The Letter then lists Exhibits B through K illustrating the floor plan before and after the renovations, as well as a gas installation permit and a plumbing permit from the municipality.

Exhibit I is a "Gas Installation Permit" dated March 23, 2021. Exhibit J is a plumbing permit from the municipality dated March 23, 2021.

The Letter continues:

This residence is meant to be a Single Family Residence, as indicated by the [municipality] utility bills. Correspondingly, there is currently only one electrical box and one meter on the grounds of the Premises for hydro, gas, and water. Both the water shut-off valve and the on-demand water heater are located downstairs in the current Tenant's unit. The outside electrical boxes are likewise connected to the fuse box in the Tenant's unit. These structural circumstances further necessitate these changes and renovations. [The Landlord] would like the future tenants to have their name on these utilities, not his own, as he will be permanently out of the country (see below). A single family residence with one unit will utilize these utilities in the manner intended by the Municipality and simplify matters for [The Landlord] as a landlord and for the future tenants.

The Letter identified four more Exhibits, which entailed utility bills for the entire residential property. The Letter goes on to say that the Landlord is permanently moving to the United States to be with his wife and granddaughter who live there. The Letter states:

[The Landlord] and the Tenant have had some minor disputes during this tenancy. Nonetheless, [the Landlord] has actually provided a positive character reference for the Tenant in the past. However, their relationship and the circumstances of the current tenancy are simply not a factor in serving this Notice. **The above-listed reasons, relating to the planned renovation, move to the US, and single family home intention are the only relevant factors [the Landlord] has considered in making this decision.** This is a move that has been underway for years and is finally coming to fruition.

[The Landlord] fully intends to compensate the Tenant with one month's rent payable under the tenancy agreement by the effective date of this Notice, as required.

For a 4 Month Notice of eviction, **section 49(6) of the Residential Tenancy Act** requires (1) that the landlord has all necessary permits and approvals before giving notice; (2) that the landlord intends in good faith to renovate or repair; and (3) that the tenant's vacancy must be necessary.

The Letter states that the Landlord has obtained all the necessary permits and that he is acting honestly, without deceit and without ulterior motive; the renovations and repairs are so extensive that the rental unit must be vacant; and that the downstairs unit will cease to exist in its current form, as the layout and the structure of the Premises will be completely and irrevocably changed. The Letter ends by saying: "Therefore, all requirements under section 49 of the Act have been met."

Counsel continued in the hearing:

[The Landlord] started work in mid-September 2021, and he continued to work on everything for the first seven months. He submitted signed witness statements on pages 18 – 21 of the response package, and pages 22 through 78 are photos of all the work that happened prior to April 1, 2022, so action was taken immediately. All of those photos are of work carried out prior to April [2022].

The Tenant's claims are based on his "walk by", but the blinds were generally closed, so he couldn't see in. This is not proof of [the Landlord] failing to do the work. Only [the Landlord] knew what he was doing inside.

A year later from when the [Four Month Notice] was issued, [the Tenant] filed for a dispute that is baseless. Compared the 78-page response package – all of this work is in line with the original notice. It has carried on for six months, and was accounted for in the Notice. His former unit is uninhabitable. [The Landlord] did the work himself as a 70 year old man – he's bound to move slower than a younger contractor. He also had a serious medical issue at this time that he did not want to disclose.

Counsel pointed to the Landlord's 78-page submission, which includes a comparison of the residential property before and after the renovations, as well as 11 points detailing 11 different features of the residential property now, versus before the Four Month Notice was served.

The 78-page submission also contains a witness statement of C.E., which states:

The seventeen (17) photographs here represent true facsimiles of the construction work and labour that I saw completed at [residential property address]. All of the construction work and labour referred to in these photographic copies were completed before April 21, 2022.

The same statement is made and signed by two other people, H.E. and P.H.

Counsel continued:

Considering all the evidence together, it is abundantly clear that [the Tenant's] claim is without merit. After so much work, [the Landlord] is ready to be done with this whole matter.

We request the claim be dismissed without leave. See the pages outlined here. Those are the key pages for what has happened in the unit. It demonstrates the work carried out as [the Landlord] said it would be.

The Landlord then asked the Tenant if he had ever entered the premises from February through April 2022. The Tenant confirmed that he had never been on the property or spoken to the Landlord since he did the move-out walk through with the Landlord. The Landlord then asked how, therefore, the Tenant can know what is going on inside the premises? The Tenant said he has a clear view from the street and he did not see any activity going on.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 (6) of the Act at the time the Four Month Notice was issued stated that a landlord may end a tenancy in respect of a rental unit if the landlord:

- (i) intends in good faith to accomplish the purpose for ending the tenancy, with no ulterior motive;
- (ii) has all permits and approvals in place before giving the Four Month Notice; and
- (iii) is ending the tenancy to do major repairs or renovations that are so extensive as to require vacant possession; the landlord may not end the tenancy to do cosmetic or routine maintenance like painting, changing flooring, or installing new light fixtures.

I find that the Landlord's plans regarding the residential property and his life have

followed the course he set out from the beginning. The evidence before me indicates that the Landlord converted the residential property from two residential units to one residence. He subsequently sold the property to help finance his retirement in the United States with his wife and granddaughter. I find that the Tenant provided no evidence that the renovations have not been done, other than his speculation from occasionally observing the residential property from the street. In contrast, the Landlord provided ample evidence that he did exactly what he said he would do. I find that the Landlord issued the Four Month Notice in good faith without ulterior motives.

The Four Month Notice was issued on April 2, 2021, and the permits are dated March 23, 2021; therefore, I find that the Landlord obtained the necessary permits prior to issuing the Four Month Notice, in compliance with the Act.

I find from the evidence before me that the Landlord began work on the residential property in mid-September 2021, and completed the work by April 2022. The Tenant vacated the rental unit on August 31, 2021; therefore, I find that the Landlord began renovation work almost immediately after the tenancy ended. Further, the Landlord continued this work for the next seven months, which is only a month longer than he predicted it would take. In fact, the Landlord said that it may go longer than five to six months, as this 70-year old man was doing the construction work himself.

I find that the Landlord's stated purpose in issuing the Four Month Notice was fulfilled in the renovation and repair work that he completed. I find that the Tenant's claim is without merit and I **dismiss it without leave to reapply**, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in his Application, as he failed to provide sufficient evidence that the Landlord failed to fulfil the purpose of the Four Month Notice. The Tenant's Application is dismissed without leave to reapply.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77 (2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1) (d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 06, 2023

Residential Tenancy Branch