



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On May 22, 2022, the Tenants applied for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement related to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated March 7, 2022 (“the Four Month Notice”). The Tenants also applied for the return of double a security deposit.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant Ms. A. N. attended the hearing. The Landlords were assisted by legal counsel. The Tenant was assisted by an agent/advocate.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to monetary compensation from the Landlords?
- Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

The Landlords and Tenant testified that the tenancy began back in November 2016 as a two year fixed term tenancy that continued on a month to month basis. Rent in the amount of \$1,500.00 was to be paid to the Landlords by the first day of each month. The Tenants moved out of the rental unit May 3, 2022, after receiving a notice to end tenancy from the Landlord and after giving 10 days written notice.

The Landlord issued the Tenants the Four Month Notice. The Notice provides the following reason for ending the tenancy:

I am going to demolish the rental unit.

The Landlord did not indicate on the Four Month Notice that the Landlord has obtained all permits and approvals required by law to do the work. On page two of the Four Month Notice the Landlord writes that the planned work is to demolish the home and build a new residence. The details provided are that the Landlord has received a deficiency report and will receive an asbestos permit and demolition permit.

A Four Month Notice provides information for tenants who receive the notice. The Notice provides that a tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person.

The Tenants accepted the Four Month Notice and exercised their right to give 10 Days written notice to end the tenancy earlier than the effective date within the Four Month Notice.

The Tenants agent stated that the Tenant is requesting compensation in the amount of 12 months' rent payable under the tenancy agreement because there are deficiencies in the Landlord's Four Month Notice.

The Tenants agent stated that when the Landlord issued the Four Month Notice the Landlord did not have all the permits and approvals required by law to do the work. The Tenants agent stated that the Tenants only received the first two pages of a Four Month Notice and that page three and four were not served. The Tenant's agent stated that the Landlord had a history of acting in bad faith as they tried to get the Tenants to sign a mutual agreement to end tenancy in February 2022.

When the Tenant was asked why they accepted instead of disputing what they submit is a deficient notice to end tenancy from a landlord who they feel acts in bad faith, the

Tenant's agent replied that they just wanted to go along with what the Landlords wanted and that they were not aware they could dispute the Four Month Notice.

Counsel for the Landlord stated that the Tenants had a right to dispute the Four Month Notice and did not do so. Counsel submitted that the Tenants knew their rights as they immediately applied for compensation a few weeks after moving out early.

Counsel for the Landlord submitted that errors present in a Four Month Notice does not give the right to compensation of 12 months rent. He stated that the intent of section 51 of the Act is clear. Counsel points out that the Landlord never selected that they had all the permits. Counsel stated that the City was waiting for asbestos removal prior to issuing the demolition permit.

The Landlords' counsel submitted that the rental unit was demolished in July 2022.

In reply the Tenant's agent confirmed that the rental unit was demolished in July 2002. He stated that the Landlord should have had all permits and approvals required by law in hand.

Security Deposit

On May 22, 2022, the Tenants applied for dispute resolution including the claim for the return of a \$725.00 security deposit. The Tenant's agent confirmed that the Tenants moved out of the rental unit on May 3, 2022. The agent stated that there was no written agreement permitting the Landlord keep any amount of the deposit. The Tenants testified that they provided the Landlords with their forwarding address in writing using text on May 3, 2022 and also in writing on June 9, 2022. The Tenant testified that the Landlord has not returned any amount of the security deposit.

Counsel for the Landlord stated that in response to receiving the Tenants 10 day written notice to vacate and request for return of deposit they asked the Tenants to provide their forwarding address. The Landlord received written notice of the Tenants forwarding address on June 9, 2022. Counsel submitted that the Tenants had already applied to keep the deposit without giving the Landlord 15 days to return or apply to keep the deposit. Counsel submitted that the Tenants claim for the return of the deposit was premature.

Counsel submitted that the Landlords are willing to return the \$725.00 deposit to the Tenants.

The Tenant stated that the Landlord replied to the text message of May 3, indicating they wanted to keep the deposit for damage to the unit.

Analysis

A landlord may end a tenancy for a demolition of a rental unit by giving notice to end the tenancy effective on a date that must be not earlier than 4 months after the date the tenant receives the notice. Section 49(6) of the Act provides that 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 demolish the rental unit.

Section 49(8)(b) of the Act gave the Tenants the right to dispute the Notice within 30 days.

The Tenants did not dispute the Four Month Notice. They accepted it and moved out prior to the effective date of the notice.

While I accept the Tenants submission that a landlord is required to serve all four pages of the Four Month Notice, I do not accept the submission that the Tenants did not know they could dispute the notice. I note that the Four Month Notice provides the following information at the very top of the Notice:

Tenant: This is a legal notice that could lead to you being evicted from your home

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this Notice within 30 days of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

I find that it is more likely than not that the Tenants would have been successful at having the Four Month Notice set aside if they had disputed it and established that it was not in the approved form.

With respect to compensation, section 51(2) of the Act provides:

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 the landlord or purchaser, as applicable, 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, except in respect of the purpose specified in section 49 (6)(a), [demolition] 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. [my addition and emphasis]

I find that the tenancy ended based on the Tenants acceptance of the Four Month Notice. Compensation to a Tenant under section 51(2) of the Act relates to whether a Landlord issues a notice to end tenancy in good faith and accomplishes the stated purpose of the notice. I find that a clerical error or deficiency in completing a notice to end tenancy that is served to a Tenant could result in having the notice set aside but does not meet the criteria for awarding 12 months of rent in compensation.

I find that the Landlord achieved the stated purpose cited within the Four Month Notice by demolishing the unit July 2022. The Tenants' claim for compensation of \$18,000.00 is dismissed without leave to reapply.

Security Deposit

I find that the Landlord received the Tenants forwarding address in writing on June 9, 2022. The Tenants served it by handing it to the Landlord.

I find that the Tenants' application on May 22, 2022, for the return of the security deposit was premature as it was made prior to the Landlord being properly served with the Tenant's forwarding address.

The Landlord stated in the hearing that they are willing to return the deposit. I order the Landlords to return the security deposit of \$725.00 to the Tenants or make a claim against it by filing for dispute resolution by February 24, 2023. Failure to return the deposit or claim against it by February 24, 2023, will give the Tenants the right to reapply for double the security deposit.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants application was not successful. I decline to order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

I find that the Landlord achieved the stated purpose cited within the Four Month Notice by demolishing the rental unit July 2022. The Tenants' claim for compensation of \$18,000.00 is dismissed without leave to reapply.

I order the Landlords to return the security deposit of \$725.00 to the Tenants or make a claim against it by filing for dispute resolution by February 24, 2023. Failure to return the deposit or claim against it by February 24, 2023, will give the Tenant the right to reapply for double the security deposit.

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: February 08, 2023

Residential Tenancy Branch