



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a monetary compensation pursuant to section 51 of the Act, that is equal to the equivalent of 12 months of rent and to recover the cost of the filing fee.

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. The tenant indicated they received the landlord's evidence by email, which they did not agree to accept documents by this method. The tenant confirmed they were able to open the email and review the evidence.

Although I accept email is not a permitted method under the Act, unless agreed upon. However, I find the tenant has been sufficiently served as they acknowledged it was received and it was viewable. Therefore, I will consider all evidence that is present at this hearing.

Issue to be Decided

Is the tenant entitled to money compensation pursuant to section 51 of the Act?

Background and Evidence

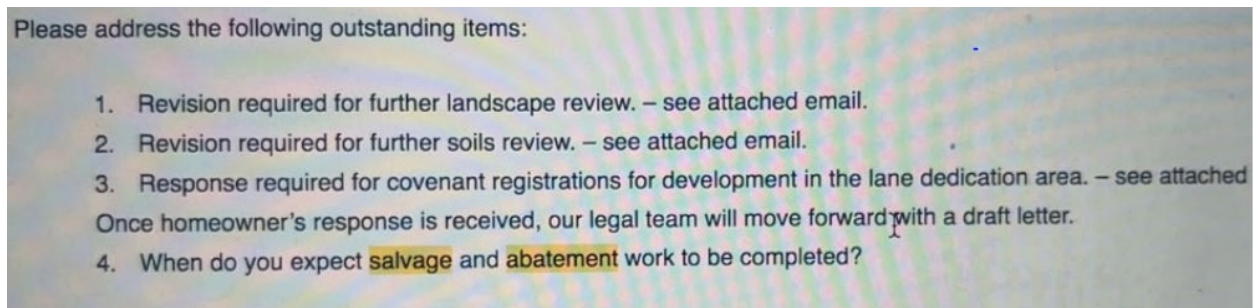
The tenancy began on February 1, 2021. Rent in the amount of \$2,900.00 was payable on the first of each month. A security deposit of \$1,450.00 was paid by the tenant. The tenancy ended on September 30, 2022.

The parties agreed that the tenant received a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, (the "Notice") issued on May 27, 2022. The reason within the Notice was to demolish the rental unit and rebuild a house for the landlord.

The tenant testified that the rental unit has not been demolished as of the hearing date, March 6, 2023, and they were forced to move during the hardest and most expensive time to find new living accommodations.

The landlord testified that they have been taking steps toward demolishing the premises. The landlord stated that the city wanted the following outstanding items to be completed before they would be allowed to demolish the premises.

Filed in evidence is an email dated October 18, 2022, after the tenancy ended, which reads in part as follows:



The landlord testified that they did complete the landscape and soil review between October and December 2022. The landlord stated that they finished the tree barrier requirements at the end of January 2023. Filed in evidence are invoices and photographs.

The landlord testified that in January 2023, they had the pre-demolition hazardous material survey completed for the salvage and abatement work that needed to be completed and the abatement work was going to start at the end of February 2023, which has now been completed. The landlord stated the city has to do a final review and they are waiting for the city to give their final approval to demolish the premises.

The landlord testified that they were also out of the country from September 30, 2022, to November 29, 2022, for a vacation and family issues. The landlord stated that during this time they lost their cellular phone and were without this service for two weeks as a new sim card had to be mailed to them.

The landlord testified that December is typically a slow month of the year. So, they did not push things very hard that month because of the holidays and the weather was bad.

The tenant responded that they have been taking photographs of the property since January 2023, there was no movement that was apparent on the property until February 13, 2023, when the orange fencing went up around the trees. The tenant stated that on February 23, 2023, the hazmat inspection was being completed and a note of abatement was on the door and the plan start date for the abatement of the rental unit was February 27, 2023.

The tenant stated that the demolition permit is still under review. The tenant stated that they could have stayed at the rental unit until the landlord completed the reports.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The landlord issued the Notice, pursuant to section 49(6)(a) of the Act, as the landlord has all necessary permits and approvals required by law and intends in good faith to demolish the rental unit.

Section 51(2)(a) of the Act states subject to subsection (3), in addition to the amount payable under subsection (1), an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

Section 51(3) of the Act states the director may excuse a landlord from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the stated reason, within a reasonable period of time after the effective date of the notice.

The Residential Tenancy Policy Guideline(the "PG") 2B states if a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

I accept the landlord had a permit to demolish the rental unit; however, that permit is subject to conditions and approvals as outlined in the email of October 18, 2022.

The landlord did not complete all steps possible before issuing the Notice as required by the PG. I find the landlord should have completed the landscape review, the soil review and the pre-demolition hazardous material survey report before issuing the Notice, as they would have had little, if any, impact on the tenancy. I find this is not an extenuating circumstance and these steps should have been completed before the landlord issued the Notice and ended the tenancy on September 30, 2022.

Nor do I find the landlord's loss of their cellular phone while on vacation relevant as stated above these reports could have and should have been done before the Notice was issued and in any event I heard no evidence that this cause any significant delays.

As of the date of the hearing, March 6, 2023, the landlord had not received final approval to demolish the rental unit. This is over 5 months since the tenancy ended, which I find this is unreasonable, as I would expect that the premises would be demolished by this time if the landlord truly had all permits and approvals required by law.

I find the landlord has not accomplished the stated reason within the Notice within a reasonable period of time after the effective date in the Notice. The landlord has only accomplished the conditions leading up to the waited approval to be allowed to demolish the premises, which for the most part could have been completed before issuing the Notice. Therefore, I find the landlord must pay the tenant the equivalent of 12 times the monthly rent of \$2,900.00 in the amount of **\$34,800.00**.

I find the tenant has established a total monetary claim of **\$34,900.00** comprised of the above amount and the \$100.00 fee for filing their application. This Order may be filed in Provincial Court (Small Claims) and enforced as an order of that court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is granted. The tenant is granted a monetary order in the above noted amount.

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: March 23, 2023

Residential Tenancy Branch