



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 the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant JT and the owner of the landlord company (the "owner") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision and order.

Issues to be Decided

1. Is the tenant entitled to 12 months' rent from the landlord?
2. Is the tenant entitled to recover the \$100.00 filing fee from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on February 15, 2021,
- This tenancy and ended pursuant to a Four Month Notice to End Tenancy for Demolition (the "Notice"), and
- monthly rent in the amount of \$1,500.00 was payable on the first day of each month.

Tenant JT testified that the Notice was posted on the door of the subject rental property on November 25, 2021 and was received by the tenants on the same day. Tenant JT testified that she filed this application for dispute resolution because the tenants were evicted for demolition and the subject property has not yet been demolished. The tenants testified that they moved out of the subject rental property on January 31, 2022. The owner testified that the tenants moved out on January 28, 2022.

The Notice was entered into evidence and states that the tenants must vacate the subject rentals property by March 31, 2022 because the subject rental property will be demolished. Both parties agree that the tenants gave notice to the landlord to end the tenancy before the effective date of the Notice.

The owner testified that at the time the Notice was served on the tenants they had a demolition permit for the subject rental property. The demolition permit for the subject rental property was entered into evidence and had an application date of October 27, 2021 and an expiry date of April 27, 2022.

The owner testified that after the tenants moved out of the subject rental property it was not demolished because the landlord was waiting for the approval of a development permit to develop the subject rental property into a four plex.

The owner testified that the subject rental city usually takes one year to render a decision on a development application but due to COVID-19 and staffing shortages at the subject rental city, it took 2 1/2 years for the landlord's development permit to be issued. The owner testified that the landlord did not want to demolish the subject rental property until the development permit was granted because if the development permit was not granted the bare lot would be valued less than the lot with the subject rental property on it. The owner testified that if the development permit was not granted the subject rental house would not be demolished.

The owner testified that the development permit was granted in March of 2023. The owner entered into evidence confirmation that the development permit was applied for

on June 25, 2021 and the file was closed on March 14, 2023. The development permit was entered into evidence. The owner testified that the demolition permit has been renewed 3-4 times because it expires every six months.

The owner testified that the landlord has not demolished subject rental property since obtaining the development permit because the landlord hasn't had the money to do so. The owner testified that it is an issue of funding right now.

Analysis

Sections 51(2) and section 51(3) of the *Act* state that if the landlord does not:

- a) accomplish the stated purpose for ending the tenancy within a reasonable period of time, or
- b) use the rental unit for the reasons set out in the Notice for at least six months' time,

the landlord must pay the tenant 12 months' rent, unless the landlord can prove that extenuating circumstances prevented the landlord from complying with the above.

It is undisputed by the parties that the landlord has not demolished the unit and that it remains standing to this day, approximately one year and four months after the tenants were evicted. As such I find that the landlord has not accomplished the stated purpose for ending the tenancy within a reasonable period of time. I must therefore determine if the owner has proved that extenuating circumstances prevented the landlord from complying with section 51(2) of the *Act*.

Residential Tenancy Policy Guideline #50 (PG #50) sets out examples of circumstances which are not likely extenuating circumstances including the following:

- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds

The owner testified that the landlord has had the development permit since mid March 2023 and has not demolished the subject rental property because he lacks the funds to do so. As set out in PG #50, failing to adequately budget for the reasons to end tenancy set out in the Notice is not an extenuating circumstance.

I find that even if I were to accept the owner's position that the city's delay in issuing the development permit was an extenuating circumstance, I find that the delay in the demolition of the subject rental property since the development permit was issued, is not an extenuating circumstance. The landlord had an obligation to properly budget for the demolition before the Notice was served. Failure to take reasonable steps to finance or otherwise fund the demolition is not an extenuating circumstance.

Pursuant to section 51(2) of the *Act*, I find that the tenants are entitled to recover 12 months' rent in the amount of \$18,000.00 from the landlord.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$18,100.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 29, 2023

Residential Tenancy Branch