



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.

Both parties 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 were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue – Service

The tenants testified that they served the landlords with their application for dispute resolution and evidenced via registered mail on August 20, 2022. The landlords testified that they received the above documents on September 5, 2022. I find that the tenants' application for dispute resolution and evidence were served on the landlords in accordance with section 89 of the Act.

The landlords testified that they served the tenants with their evidence via registered mail on April 8, 2023. The landlords testified that the evidence was available on April 12,

2023 and was successfully delivered on April 13, 2023. The tenants testified that they received the landlords' evidence but could not recall on what date. The tenants testified that the date stamp on the envelope is April 8, 2023. I find that the tenants were deemed served with the landlords' evidence on April 13, 2023, 5 days after its registered mailing in accordance with sections 88 and 90 of the act.

Issues to be Decided

1. Are the tenants' entitled to 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 of the Act?
2. Are the tenants entitled to authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act?

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 tenants' and landlords' claims and my findings are set out below.

The tenants testified that this tenancy began on August 1, 2017 with different landlords. Both parties agree that monthly rent in the amount of \$2,740.50 was payable on the first day of each month.

The landlords testified that they purchased the subject rental property from the seller and asked the seller in writing to serve the tenants with a Two Month Notice To End Tenancy For Landlords Use Of Property (the "Notice"). The landlords testified that they took possession of the subject rental property on May 1, 2022.

The Notice was entered into evidence and states that the tenants must move out of the rental unit by April 30, 2022. The Notice states that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. Both parties agreed that this tenancy ended pursuant to the Notice on April 30, 2022.

The tenants testified that they filed this application for dispute resolution because the landlords or close family member of the landlords have not moved into the subject rental property within a reasonable period of time after the tenancy ended. The tenants testified that instead of moving in the landlords have completed extensive renovations which were planned and not outside of their control. The tenants testified that the home was empty for a long period of time after the tenants moved out and before the renovations began.

The landlords testified that they purchased the subject rental property for their own use and that they planned for a significant renovation to be completed before moving into the subject rental property. The landlords testified that the renovation is extensive and given the amount of asbestos found in the subject rental property a full gut job was required.

The Landlords testified that they first walked through the subject rental property on February 19, 2022 and it was evident at that time that the property needed substantial renovation due to water damage from a leaking roof. The landlords testified that market conditions at the time of purchase did not allow for them to have a home inspection as a condition and it was not clear at the time of purchase the full scope of the required renovations. The landlords testified that they were aware when they purchased the subject rental property that the windows were single pane and because the property was built in 1967 there was a potential for asbestos.

The landlords testified that on February 24, 2022 they gave written notice to the seller for vacant possession of the subject rental property the landlords testified that on February 25, 2022 the Notice was served on the tenants. The landlords testified that on March 8, 2022 they walked through the subject rental property with their contractor to assess the scope and requirements needed for the renovation. The landlords entered into evidence a letter from their contractor dated March 16, 2023 (the "contractor letter") which states in part:

The home was occupied with furniture, and we were unable to access part of basement due to a secondary tenant occupying that part of the basement. My preliminary assessment for cosmetic renovation on March 8th: Cosmetic renovation may not be adequate based on the condition of the home. Potential of asbestos, questionable electrical wiring (ie sub panel), registered suite (non conforming), windows (not to fire code, specifically on neighbor side), and various other items that would need to be addressed. Any work in the home

would require a permit. [The tenants] and their kids would not be able to live in the home during the renovation. [The tenants] were not provided any access to the home by the main tenants after the March 8th walkthrough, to complete any inspections or measurements of the home. This made it difficult to know what the scope of work would be and what could be salvaged, ie furnace, hot water tank, electrical panel...etc.

Both parties agree that after the tenants gave access to the landlord and the landlord 's contractor in March of 2022, the tenants requested that no further access to the subject rental property be requested for the duration of the tenancy. The Landlords testified that while this caused them difficulties in organizing the renovation, they respected the tenants' wish not to be disturbed while they packed and moved.

In the hearing the landlords presented the contractor letter which set out the following timeline of work on the subject rental property:

[The landlords] signed a renovation contract on April 17th, 2022, to renovate their family home, [the subject rental property]. The contract was based on a worse case scenario, as the home was built in 1967 would likely have asbestos and would need to be brought up to code once the renovations were started.

We engaged an architect as the district did not have any plans on file. The architect would commence the work once [the landlords] had possession on May 1st as the tenants would not provide access. I had also engaged an engineer to provide a report and complete site visits as required.

I had ordered a topographical survey and received the report on April 21st. We engaged [redacted for privacy] to test for asbestos. Samples were taken on May 2nd the day after [the landlords'] got possession of their home.

On May 5th, I completed a full walkthrough of the home with [the landlords]. The following items were evident: illegal electrical behind stove and other locations, mould, cat urine, furnace, and ducts full of dust and debris, wet hardwood flooring, mould in attic from roof leak, significant deterioration of the exterior & other various items. The asbestos report was received on May 16th, confirming the home had asbestos. All drywall joint compound, vinyl floor both kitchens and all bathrooms, all windows with mastic, & tape on ducts. The report recommended the drywall removed, flooring removed, windows removed and tape on ducts removed before any renovations are started. [The landlords] wouldn't be able to live in home as the asbestos would need to be removed

before any renovations and a complete overhaul of the house would be required to bring the home up to code and meet the [district] bylaws. Once the abatement was completed, we would need to fur out the walls to specific code, new insulation, plumbing, electrical, roof, flooring, bathrooms...etc. The timeline for a job this size would be approximately 10 months from the date of permit issuance and would not include any weather, supply chain, labour, or district delays. After not having access to the property from March 9th to April 30th we lost a significant time to have the plans completed to submit to the [district] for permitting. After various meetings with the [the landlords] the Architect, Engineer and myself we rushed the plans and submitted them to the [the district] on June 9/22. (plans, survey, engineer report, permit application and questionnaire)

August 11/22, I had an intake meeting with the [district] on the plans that were submitted June 9/22.

August 18/22 a deposit of 50% for the permit was paid to the [district] confirming the plans were in compliance.

September 5/22 I was contacted by [the landlords] letting me know they returned from vacation and received Notices of Dispute Resolution claiming they were not living in the home and asked if I would write a letter before the April hearing to provide confirmation the home is being renovated for them to move into and to provide the timeline and delays to complete the renovation of their home.

September 26/22 the building permit was issued and our completion for the project and the family to move in was slated for June 2023 not including any significant delays.

September 28/22 the abatement started and completed by Oct 17/22. During the process, they were not able to remove the asbestos tape on the duct work and needed to remove all the duct work.

From October 18/22 to November 28/22 – majority of the work was exterior work with some final clean demolition to be completed. (Clean demo is all the items that were not included in the asbestos removal)

The exterior work was overgrown trees, shrubs, hedges, significant exterior drainage repairs as we discovered a leak in the foundation after the drywall was removed.

From Dec 2/22 to the date of this letter – most of the interior framing has been completed, we encountered plumbing issues and had to replace the interior

drainage that was in poor condition. This involved breaking concrete and replacing pipes that were then inspected by the [the district] before filing in concrete. New water line needed to be installed, that also required [district] inspection. Most of the windows are installed except the sliding doors that are on back order. The electrical and HVAC have done most of their pre-installation. Most of the roof has been replaced except for the front of the house as we were awaiting trusses that replaced some of the damaged roof. Those were delivered on Feb 18/22 and will be installed, allowing for the rest of the roof to be completed. Once the roof is completed the house can get wrapped and with the installation of the last few windows, we will start insulating the interior and then start drywalling. We have encountered several challenges and delays: Delay of plans due to access, weather (severe cold and snow), inspections, unexpected underground plumbing, foundation leak, supply chain issues, etc.

[The landlords] are heavily involved in the project and are also onsite on weekends cleaning. The family has also been working with a designer to personalize the home to their taste. Their daughters are excited to move in and have also been working on some colors and designs for their rooms. We are also working on personalizing a space for their small dog. I have been working with [the landlords] and their family on this renovation and look forward to getting them into their renovated dream home this summer.

The landlords entered into evidence a renovation hazardous material inspection report (the "inspection report") dated May 9, 2022 which states:

[The inspection company] was retained to conduct a pre-renovation hazardous materials Survey of **[the subject rental property]** on **May 2, 2022**. The inspection was performed on the interior of the subject property to identify any asbestos containing building material that may be handled, disturbed or removed during renovation, (Occupational Health and Safety Regulations-part 20 section 20.112).

A total of twenty-three samples of building material were taken from the subject property that were suspected to contain asbestos for renovation purposes and submitted to BC Hazmat for analysis. **See attached laboratory results.**

The following areas in the house were found to contain asbestos:

- 1. All drywall joint compound.**
- 2. Vinyl floor of top floor kitchen and top floor bathroom (bottom layer).**
- 3. Vinyl floor of basement bathroom and basement kitchen.**
- 4. All windows with mastic.**

The landlords entered into evidence an asbestos abatement clearance letter dated October 17, 2022 which states that a moderate risk asbestos abatement project performed by the abatement company at the subject rental property was completed on October 17, 2022. Staff safely removed 12 tonnes of drywall joint compound, 300 pounds of vinyl sheet flooring and plywood subfloor, and 100 linear feet of duct wrapping as per work safe BC guidelines and protocols.

The landlords entered into evidence proof of eight building permit applications made between the date of purchase of the subject rental property and March 21, 2023.

The landlords entered into evidence photographs of the condition of the subject rental property on the day of possession, May 1st 2022. The photographs show:

- a dirty furnace filter,
- a dirty air intake channel,
- worn out and stained carpet,
- mold under the carpet in the basement,
- mold behind the stove,
- electrical concerns,
- mold in kitchen cupboards,
- worn out parquet flooring,
- a dead mouse and rodent droppings,
- Rotting wood at roofline, and
- windows taped closed.

The landlords entered into evidence photographs of the following work completed at the subject rental property:

- hazmat asbestos removal,
- window replacement,
- roof replacement,
- drywall removal,
- repair two front drainage system,
- repair of cracking foundation, and
- Replacement of rotten fascia.

The landlords testified that they are currently living with family while the renovations are underway and will move into the subject rental property as soon as the renovations are

complete. The landlords entered into evidence a letter from landlord ZK's mother confirming same.

The tenants testified that they understand that the major renovation has been difficult on the landlords but having to move their family and children mid school year was very difficult on them.

The tenants testified that the landlords knew the condition of the subject rental property when they purchased it and were aware of the potential for asbestos. The tenants testified that before evicting them they should have completed a home inspection which would have revealed the extent of the renovations necessary. The tenants testified that given the condition of the subject rental property, no one would purchase it and move in without completing substantial renovations.

The tenants testified that the landlords should have served them with a Four Month Notice To End Tenancy For Renovation ("Four Month Notice") and not the Notice because the landlords were aware that they could not move into the subject rental property within a reasonable time after the eviction notice. The tenants testified that an extra two months' notice would have allowed their children to finish the school year at their school. The tenants testified that the landlords should have had the permits in place before evicting them.

Analysis

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must

have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Both parties agree that the landlords have not yet moved into the subject rental property because it is undergoing a substantial renovation. Based on the contractor letter, the inspection report and the clearance letter, I find that vacant possession of the subject rental property was required for the planned renovations due to both the scope of the renovation and the presence of asbestos in a wide variety of building materials in the subject rental property.

Based on the landlord's testimony, the contractor letter and the letter from landlord ZK's mother, I find on a balance of probabilities, that the landlords plan on moving into the subject rental property when the renovations are completed.

The tenants testified that the landlord should have served them with a Four Month Notice to End Tenancy for Renovation because vacant possession was necessary to complete the renovation. I note that Four Month Notices are no longer permitted to be served on tenants, and instead the landlord may apply to the Residential Tenancy Branch for an order to end the tenancy for renovation. I find that while the landlords could have applied to the Residential Tenancy Branch for an order to end the tendency for a renovation requiring vacant possession, they were not required to do so. Because the landlords intend on residing in the subject rental property after the renovations are completed, they were permitted to ask the seller to serve the Notice on the tenants.

The ill section 51 of the *Act* is aimed at preventing is a landlord evicting a tenant under the guise of themselves or a close family member moving in and then the landlord not following through with the reason for ending the tenancy and using the subject rental property for another purpose. I find that as the landlords intend to move into the subject rental property, section 51 of the act is not intended to penalize them for renovating the subject rental property before doing so.

While the timeline example provided in Residential Tenancy Policy Guideline #50 as a reasonable period of time for the landlords to move in following the effective date of the Notice in is short, 15 days, the policy guideline states that the period of time is usually short, not that it is always short. Again, the policy guideline states that the steps should be taken as soon as possible or as soon as the circumstances permit. Based on the contractor's letter and the inspection report, I find that the landlords took reasonable steps to promptly initiate their planned renovation. I note that the inspection report was commissioned the day after the landlords took possession of the subject rental property, the contractor walked through the subject rental property prior to the landlords taking possession of the subject rental property and the required reports from the architect, contractor and engineer were submitted to the district with the landlords' permit applications by June 9, 2022.

I find that while work on the subject rental property could not start until the required permits were obtained by the landlord, this delay is through no fault of the landlords and is a part and parcel of completing renovations. I find that the landlords permit applications were made promptly after the landlords too possession. I find that there is no requirement for the landlords to have permits in place prior to serving the Notice. The

requirement to have permits in place is for applications to end tenancy made under section 49.2 of the *Act* (applying to the Residential Tenancy Branch for an order to end the tenancy for renovation,) not section 49(5) of the *Act* (ending the tenancy pursuant to the Notice).

I accept the veracity of the inspection report that a large proportion of the subject rental property was contaminated with asbestos and required extensive remediation. Upon review of all the landlords' evidence before me including reports, letters, photographs and testimony, I find that the subject rental property was in significant need of cosmetic and more substantial renovation at the time of purchase. I find that the timeline for the required and cosmetic renovations set out in the contractor's letter is reasonable in the circumstances. I find that while the renovation is not yet complete, the projected completion date of the summer of 2023 is reasonable in the circumstances.

I find that the landlords acted reasonably and quickly in testing for asbestos, applying for permits for the planned renovations, completing asbestos abatement and planned renovations. I find that the landlords have proved that they have taken reasonable steps to accomplish the stated purpose for ending the tenancy as set out in the Notice, that being they have taken reasonable steps to repair and renovate the subject rental property before moving in in accordance with section 51(2)(a) of the *Act*.

As the landlords have not yet moved into the subject rental property, I find that the tenants' application for compensation under section 51 of the *Act* is premature because it is not yet possible to determine, pursuant to section 51(2)(b) of the *Act*, if the landlords will reside in the subject rental property for at least six months duration after the renovations are complete. The tenants' application for compensation under section 51(2)(b) is therefore dismissed with leave to reapply. If the tenants have reason to believe that the landlords do not move into the subject rental property this summer and do not reside in the subject rental property for at least six months duration, they may re-file this application for compensation under section 51 of the *Act*.

As the tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100 filing fee.

Conclusion

The tenants' application for compensation pursuant to section 51(2)(b) of the Act is dismissed with leave to reapply.

The tenants' application to recover the filing fee is dismissed 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: May 3, 2023

Residential Tenancy Branch