



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant applied for dispute resolution (Application) and seeks the following:

- Compensation of \$10,884.00 under section 51 of the *Residential Tenancy Act* (the Act) because their tenancy ended due to a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the Notice) and the Landlord has not complied with the Act or accomplished the renovations or repairs stated on the Notice within a reasonable period; and
- To recover the cost of the filing fee under section 72 of the Act.

The Landlord's Agent and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As all parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Tenant entitled to the requested compensation?
2. Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenant seeks compensation of \$10,884.00 which is equivalent to twelve months' rent based on the Landlord failing to comply with the Act or accomplish the renovations or repairs stated on the Notice within a reasonable period after the effective date of the Notice.

The parties agreed on the following regarding the tenancy and the Notice:

- The tenancy started on April 1, 1992.
- The tenancy ended on May 31, 21 in accordance with the Notice, after the Tenant gave notice to end the tenancy early.
- The Notice is dated March 30, 2021 and provides an effective date of July 31, 2021.
- When the tenancy ended, rent was \$907.00 per month.

The Landlord's Agent testified as follows. The tenants of the rental property (the Property) were informed that there needed to be an electrical upgrade within the building and all units would be affected. The electrical panels needed to be changed for safety reasons and the Landlord's insurers would not renew their policy unless the upgrades went ahead. The work to complete the electrical upgrade would mean there would be no power to the Property for 4 to 6 months. As a result, the Notice was issued.

It took BC Hydro almost two years to complete the work. I was referred to an email exchange between the Landlord's contractor and BC Hydro that was entered into evidence by the Landlord.

The Landlord's Agent stated that delays were caused by changes in staff and errors in information provided by a BC Hydro employee at the start of the project. This meant designs had to be completely re-done. The initial design had been for an overground electricity supply, but it was later realized that due to the error on the part of BC Hydro, this was not possible, and an underground supply would have to be put into place instead, which required a new design and delayed the project significantly.

I find the email communication entered into evidence shows that the request for the upgrade to the electrical supply was made by the Landlord on March 30, 2021, the day after the permit was issued by the City of North Vancouver (the City). The design technician at BC Hydro formally contacted the electrical designer for the Landlord on May 12, 2021 and the parties communicated over the subsequent weeks regarding the project. I find the Landlord's electrical designer provided the information to the design technical promptly and without significant delay throughout the correspondence.

In October 2021, an email from a member of the distribution design team at BC Hydro informed the Landlord's electrical designer that the party who they had been communicating with about the project had left BC Hydro and the information they had been working with and based the designs on was incorrect. As a result, the design for the electrical supply would need to be started again with a new designer.

The new design was finished in December 2021 and submitted by BC Hydro to the City for approval in January 2022. BC Hydro started work in July 2022 on installing the overhead electrical supply and by October 2022, the Landlord was instructed they could apply for a temporary account with BC Hydro and that permanent power would be connected by December 2022. Due to heavy snow in December 2022, the permanent power to the Property was connected in January 2023.

The Landlord's Agent stated the external electrical wires had to be re-wired and then connected to the electrical panel for each individual unit within the building which was a big project. BC Hydro also had to remove the old electrical panel, upgrade the system from 60 to 100 amps and wire the panel to the building. The project could not be completed without BC Hydro their work first. As it took almost two years for the BC Hydro to complete the project, there was no power within the building so other work could not be done. It was not possible to hire an independent contractor to do this part of the project as supplying electricity to the Property could only be carried out by BC Hydro. The work was finally completed in January 2023 when permanent power was connected to the Property.

Since January 2023 the Landlord's private electrical contractor has been working on re-wiring from the panel to each individual unit. The Landlord is still waiting for an inspection regarding the occupancy permit from The City. The Agent has telephoned the City to ask for an update and does not have an estimate when the inspection will be carried out or when the approval will be given.

Also, the City requires the Property to adhere to current fire codes. This meant the doors to each unit have to be resistant to fire for 45 minutes. There were 47 doors that needed to be replaced. The Landlord was unable to find this quantity from a retail supplier, so they had to source the doors from out of province. It took around two months for the doors to be obtained. The doors then needed to be installed and have locks installed and then be inspected by the City again. The requirement for the new doors was discovered in February 2023 following a City inspection of the Property.

The building is 52 years old with little in the way of upgrades so there were safety issues that needed to be corrected. Each time holes were drilled to connect the new wiring and the walls were opened up, the City needed to inspect due to potential risks associated with asbestos. The building can not be occupied as the Landlord is still waiting for a City inspection. The inspection was requested at the end of February or March 2023. Without the occupancy permit the units can not be rented out again.

The Tenant testified as follows. The estimate the Landlord provided for the work to be completed was 4 to 6 months. The work has yet to be completed, 22 months after their tenancy ended.

Work began at the Property the day after the Notice was issued. Demolition began and WorksafeBC issued 5 stop work orders. Carpets, cabinets and stoves were being removed to strip the units. Exit stairwells were removed from the building while the tenants were still living there. The Tenant was the main contact for WorksafeBC and they were concerned about the risk of asbestos. I was referred to the WorksafeBC stop work orders that were entered into evidence by the Tenant.

On December 8, 2022 an email was sent by the Landlord inviting the tenants to a "grand opening" at the Property but it was canceled due to poor weather. There has been no updates or further invitations to view the Property after repairs have been completed.

The Tenant had contacted the Landlord's insurers who referred them to their parent company. The Tenant discussed with 3 representatives the issue of the Landlord being unable to insure the Property and they said it would not be a problem, though they were unable to share private information about the Landlord due to privacy. A friend of the Tenant's building has the same wiring as the Property and they have no issues getting insurance.

The Tenant visited the building many times while the work was being completed. The Notice stated the Landlord would put in baseboard heating and hot water tanks. The building has heat pumps and condensing units on the decks now and they were still being installed as of a few weeks ago. The wiring was done before BC Hydro had finished their project and it does not need for BC Hydro to finish their work before doing any internal wiring.

In response to the Tenant's testimony, the Landlord's Agent testified as follows. They did not know how the Tenant got information from the Landlord's insurers, but they were given requirements before they could renew the policy, and this was reflected on the Notice.

Aside from the delays caused by BC Hydro, there were other issues as the work was completed. Bad weather in December 2022 halted the project and workers refused to come back during that time.

The Landlord's contractors said they could not work with temporary power as it was not sufficient to do major work. They asked the contractors and they said they could only work with permanent power. Also, the last tenant moved out of the Property in November 2021 which further delayed the start to work on the upgrades.

The Landlord's Agent argued that the Landlord has nothing to gain by having no rental income and wanted the upgrade to the Property to be completed as quickly as possible.

The email inviting the tenants to the building was based on an expected finishing time from BC Hydro, which was delayed.

The City inspection was requested in February 2023. The City inspected and then told the Landlord more things need to be done. Each time the City inspected, they did not advise of all the things that needed to be done at the same time which caused further delays.

The Tenant stated temporary power is run from a box installed next to the pole and it can run worker's tools etc. which means wiring can be done before any permanent source of electricity is connected by BC Hydro, as the wiring observed prior to BC Hydro completing the project shows.

Analysis

At the time the Notice was issued, section 49(6)(b) of the Act provided that a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith renovate or repair the rental unit in a manner that requires the rental unit to be vacant. This section of the Act was subsequently repealed.

Section 51 of the Act provided that if a tenant receives a Notice to End Tenancy under section 49 of the Act, the landlord must pay the tenant twelve months' rent in compensation if 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 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.

However, section 51(3) of the Act stated that an arbitrator may excuse a landlord from compensating a tenant if, in the arbitrator's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy.

In this case, the Notice indicates the Landlord plans to change electrical panels in 47 units within the Property, install baseboard heaters and hot water tanks and upgrade the service to 108 volts / 800 amps. The Notice also indicates all units within the Property need to be vacant as walls will need to be demolished for wiring to be relaced and units will be without electricity for 3-6 months. The Notice confirms the electrical alteration permit was issued on March 29, 2021, the day before the Notice was signed.

It was not disputed by the parties that the upgrades stated on the Notice took longer than the Landlord's six months estimate. The electrical upgrades took almost 18 months from the effective date of the Notice, which I find is not a reasonable amount of time. Given this, I must consider if the Landlord put forward valid extenuating circumstances which prevented the upgrades as stated on the Notice from being accomplished within a reasonable amount of time. If I find the reasons to be valid extenuating circumstances, the Landlord will be excused from compensating the Tenant.

Policy Guideline 50 on Compensation for Ending a Tenancy defines extenuating circumstances as circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. The Landlord has the burden of proving,

on the balance of probabilities, that they are excused from paying compensation to the Tenant on the basis that extenuating circumstances prevented the repairs or renovations on the Notice from being accomplished within a reasonable amount of time.

The Landlord's Agent put forward a range of reasons as to why the work had not been completed within the estimated timeframe of six months. These reasons included delays caused by BC Hydro, City inspections resulting in piecemeal requests for alterations to the Property, tenants moving out of the Property after the effective date of the Notice and winter weather delaying the work.

Having considered the record of email correspondence of between the Landlord's electrical designer and BC Hydro, I find the delay in providing an electrical supply to the Property to be due to errors and the delays on the part of BC Hydro and not the Landlord. I find the responses from the Landlord's electrical designer to be prompt and cooperative in nature. The production of the electricity supply designs was significantly delayed due to the incorrect information provided by BC Hydro at the start of the project. Once the designs were finalized, they required approval from the City which in turn created another delay. Once approved, the work was completed in approximately 6 months, with some relatively minor delays caused by weather in December 2022.

I accept the testimony of the Landlord's Agent which confirmed that only BC Hydro could carry out the work to supply the Property with an external electricity source. Having considered the evidence of the Landlord and testimony of the Landlord's Agent, I find there were significant delays in the external electricity source being provided and this stage of the upgrades to the Property was only completed in January 2023, almost 22 months after correspondence with BC Hydro was instigated by the Landlord. I find this to be a significant delay to the overall renovations to the Property and one which was both outside of the control of the Landlord and could not have been reasonably anticipated.

The Landlord's Agent also stated that delays from the City also delayed the upgrades to the Property. Based on the email correspondence with BC Hydro, I find the electrical designs were submitted to the City in January 2022 and the work to install the poles for overground electrical source was given approval in July 2022 which leads me to conclude the Landlord's Agents assertion that there were delays caused by the City to be credible.

I accept the testimony of the Landlord's Agent which confirmed that additional and unforeseen issues with the Property were brought to the Landlord's attention following City inspections. These issues included the requirement for fire doors with precise specifications and these requirements caused further delays to the upgrades on the Property. I also accept that approval from the City for an occupancy permit has also been pending since February 2023.

Given the above, I find on a balance of probabilities, that the extenuating circumstances put forward by the Landlord to be valid. I find the bulk of the delays in the project to be chiefly attributed to errors on the part of BC Hydro and delays in getting approval from the City. I find both of these issues to be beyond the control of the Landlord and not foreseeable. Therefore, the Landlord is excused from compensating the Tenant.

Given the above, the Application is dismissed without leave to reapply.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Tenant's Application 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 Act.

Dated: July 05, 2023

Residential Tenancy Branch