



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

MNETC (B.J. and J.T.)

MNETC (M.A. and K.K.)

Introduction

This hearing dealt with the Tenants' joiner applications under the *Residential Tenancy Act* (Act) for an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under section 51 of the Act.

The hearing was conducted via teleconference. The Landlord, his agent A.A., Tenant B.J., Tenant B.J.'s agent, W.G., and Tenants, M.A. and K.K., attended the hearing at the appointed date and time. All parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Tenants B.J. and J.T. served the Proceeding Package to the Landlord by registered mail on June 24, 2023. The Landlord confirmed receipt. I find that Tenants B.J. and J.T.'s Proceeding Package was deemed served on June 29, 2023 under sections 89(1)(c) and 90(a) of the Act.

Tenants M.A. and K.K. served the Proceeding Package to the Landlord by registered mail on November 1, 2023. The Landlord confirmed receipt. I find that Tenants M.A. and

K.K.'s Proceeding Package was deemed served on November 6, 2023 under sections 89(1)(c) and 90(a) of the Act.

Service of Evidence

Tenants B.J. and J.T. personally served their evidence on the Landlord on January 5, 2024. The Landlord confirmed receipt of Tenants B.J. and J.T.'s evidence. Based on the submissions before me, I find that Tenants B.J. and J.T.'s evidence was served to the Landlord in accordance with section 88 of the Act.

The Landlord served his evidence to Tenants B.J. and J.T.'s agent by registered mail on January 8, 2024. Tenants B.J. and J.T. confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was deemed served on January 13, 2024 to Tenants B.J. and J.T.'s agent in accordance with section 88(d) and 90(a) of the Act.

The Landlord served his evidence to Tenants M.A. and K.K. by registered mail on January 8, 2024. Tenants M.A. and K.K. confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was deemed served on January 13, 2024 to Tenants M.A. and K.K. in accordance with section 88(d) and 90(a) of the Act.

Issues to be Decided

Are Tenants B.J. and J.T. entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Are Tenants M.A. and K.K. entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

B.J. and J.T.'s tenancy:

Evidence was provided showing that this tenancy in the basement unit began in 2011. The monthly rent was \$1,383.00, due on the first day of the month, with a security deposit in the amount of \$675.00. The parties confirmed that the Landlord returned their full deposit at the end of their tenancy.

The Landlord served the Four Months' Notice to Tenants B.J. and J.T. by attaching the notice on the Tenants' door and by email on October 31, 2021. The Tenants confirmed receipt of the Four Months' Notice. The reason noted on the Landlord's Four Months' Notice was that the Landlord would be demolishing the rental unit. The Four Months' Notice only specified that the Landlord would be 'Demolishing the unit.' and did not set out that they had all the permits and approvals required by law to do this work. The effective date on the Four Months' Notice was February 28, 2022. Tenants B.J. and J.T. confirmed they received one month free rent, and their tenancy ended on February 28, 2022.

M.A. and K.K.'s tenancy:

Evidence was provided showing that this tenancy in the main floor of the house began on June 1, 2019, with a monthly rent of \$2,200.00, due on the first day of the month, with a security deposit in the amount of \$1,100.00 and a pet damage deposit of \$1,100.00. The parties confirmed that both deposits were returned to the Tenants at the end of their tenancy.

The Landlord served the Four Months' Notice to Tenants M.A. and K.K. by attaching the notice on the Tenants' door, by email, and personally on October 31, 2021. The Tenants confirmed receipt of the Four Months' Notice on October 31, 2021. The reason noted on the Landlord's Four Months' Notice was that they will be demolishing the rental unit. The Four Months' Notice only specified that the Landlord would be 'Demolishing the unit.' and did not set out that they had all the permits and approvals required by law to do this work. The effective date on the Four Months' Notice was February 28, 2022. Tenants M.A. and K.K. confirmed they received one month free rent, and their tenancy ended on April 15, 2022.

The Landlord submitted that the home was originally constructed in 1912. The Landlord and his now estranged wife have owned the residential property as joint tenants since March 2015. The Landlord testified that they have been trying to demolish the house since 2019.

The Landlord entered into a General Service Agreement on September 5, 2019 with the contractor who would be planning and implementing the duplex construction. The Landlord had applied for most necessary permits and approvals as follows:

Application/Issue date	Details	Completion date
March 9, 2020	Building grades permit	April 14, 2020
Sept 2, 2021	Subdivision permit	June 21, 2022
Apr 3, 2020/June 24, 2022	Development permit	
July 4, 2022/Aug 30, 2022	Sewer & water connection permit	

The Landlord testified that him and his wife are in the process of a contested divorce of which he provided the court file number. The Landlord said that civil matter began on December 16, 2021, but did not provide documentation confirming this. The Landlord uploaded a copy of a title search document into his documentary evidence. The Landlord's ex-spouse registered a certificate of pending litigation (CPL) on the house title on November 16, 2022.

The Landlord's agent submitted, since the CPL was registered on the property, the Landlord has not been able to make good on the permits issued for development of the residential property. The Landlord is legally bound that he cannot make any commercial changes to the residential property without the waiver of the party who holds the CPL.

The Landlord's agent stated that the Landlord had to re-rent the rental units in 2022 when the CPL was registered because the Landlord had on-going responsibilities to pay his mortgage.

Tenant B.J.'s agent states that the timeline is important:

- October 31, 2021 – Four Months' Notice issued
- February 28, 2022 – Tenants B.J. and J.T. did not dispute the notice and vacated
- April 15, 2022 – Tenants M.A. and K.K. did not dispute the notice and vacated
- November 16, 2022 – CPL registered against title by the Landlord's ex-spouse (13 months after the notice to end was served)

The Landlord, although had some permits for work towards redeveloping the residential property, there was no permit for demolition, and the residential property was never demolished. Tenant B.J.'s agent stated that a reasonable time for demolition would be relatively short referring to Residential Tenancy Policy Guideline #50-Compensation for Ending a Tenancy (PG#50).

Tenant B.J.'s agent stated that the Landlord did not provide convincing testimony of extenuating circumstances that prevented him from accomplishing the stated purpose

within a reasonable period after the effective date of the notice to end tenancy since the hold on the property was registered on November 16, 2022.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. RTB Rules of Procedure 6.6 states the onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, in this case, the Landlord must prove that they accomplished the stated purpose for ending the tenancy under section 49 for at least six months.

Are the Tenants entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, and the rental unit is not used for the stated reason for at least six months.

The effective date of the Four Months' Notice was February 28, 2022. Tenants M.A. and K.K. vacated their rental unit on April 15, 2022 after receiving approval from the Landlord for an extension to the effective date of their notice. I find that the six-month end date must be the same for both parties as they both resided in the residential property albeit different units, and the basement unit could not be demolished prior to the main floor unit. Therefore, I find that the six-month end date for both parties was October 15, 2022.

PG#50 states that a reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The Landlord did not demolish the residential property, but instead re-rented the rental units due to his financial pressures.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants have established their claim for compensation related to a notice to end tenancy where the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice.

Section 51(3) of the Act can excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for at least 6 months.

PG#50 defines what would and would not constitute an extenuating circumstance.

The Landlord submits that because of his contested civil matter, he could not advance progress on demolishing the residential property. I note that the Landlord stated that his civil matter commenced December 16, 2021, but did not provide documentary evidence to confirm this fact. I place little weight on this testimony. The Four Months' Notice was issued on October 31, 2021. The Landlord should therefore have been aware that it would have been impossible to fulfil his obligations under the Notice. The Landlord's ex-spouse registered a CPL against the title of the home on November 16, 2022. The Landlord had sufficient time from April 15, 2022, when Tenants M.A. and K.K. vacated up to when the CPL was registered on November 16, 2022 to demolish the residential property if he had done his due diligence.

I find these facts do not support that there were extenuating circumstances that prevented the Landlord from accomplishing the stated purpose – demolishing the residential property. I find the Landlord did not adequately budget his time and progress towards the stated purpose especially after Tenants M.A. and K.K. had vacated their rental unit. The Landlord did not provide an explanation why the development permit and the sewer and water connection permit were not completed, although they had been applied for and issued on Apr 3, 2020/June 24, 2022 and July 4, 2022/Aug 30, 2022 respectively.

Based on the totality of the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not proven an extenuating circumstance that prevented the Landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy under section 51(3) of the Act.

Therefore, I find the Tenants are entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51(2) of the Act. I grant Tenants B.J. and J.T. a monetary award of **\$16,596.00**. I grant Tenants M.A. and K.K. a monetary award of **\$26,400.00**.

Conclusion

I grant a Monetary Order to Tenants B.J. and J.T. in the amount of \$16,596.00. 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 of British Columbia and enforced as an Order of that Court.

I grant a Monetary Order to Tenants M.A. and K.K. in the amount of \$26,400.00. 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 of British Columbia 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 Act.

Dated: February 16, 2024

Residential Tenancy Branch