Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former tenants (hereinafter the "tenant") filed an Application for Dispute Resolution (the "tenant's Application") on April 21, 2021. They are seeking an order for: compensation related to the landlord ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on October 22, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other's prepared evidence package. On this assurance, the hearing proceeded as scheduled.

Issues to be Decided

Is the tenant entitled to monetary compensation for the landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the tenant entitled to recover the filing fee for the tenant's Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement they signed at the start of the tenancy, three days after the landlord signed it on June 6, 2019. The start of tenancy was June 1, 2019 on a month-to-month basis. The rent remained at $1,000 throughout the tenancy. This rental unit, occupied by the tenant, was the lower portion. A separate

party was the tenant in the upstairs portion prior to the landlord/new owner issuing the notice to end tenancy.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property the "Two-Month Notice") on July 31, 2020. This was for the tenant move-out date on September 30, 2020. The tenant did not apply for dispute resolution to challenge the validity of this notice and moved out on that set date.

The Two-Month Notice specified that "The rental unit will be occupied by the landlord or the landlord's close family member". The landlord indicated "The landlord or the landlord's spouse" would occupy the rental unit. In the hearing, the landlord stated that their intention at the time of issuing the notice was that they (as a whole family) would be moving into the whole house of which the rental unit was the lower part.

An email from the landlord to the tenant is in the tenant's evidence, dated July 31, 2020. This shows the landlord's rationale for issuing the Two-Month Notice:

- the city could not tell the landlord how long it would take to approve their plans to build, then the landlord would have to issue a Four-Month Notice to End Tenancy in the case where their intention is to demolish the house containing the rental unit – this would delay the ability of the landlord to start that project by 6 or 7 months
- their then-current house was sold, meaning they had to move out from that abode by October 1 – they would thus have to rent a separate accommodation
- they issued the Two-Month Notice because "[they would] need to live there over the next couple of months while [they] await approval"
- this was still in line with the original design when they purchased the property in April 2019

The tenant also submitted an email discussion between the landlord and the upstairs tenant, dated July 27-28. This shows the landlord informing that other tenant they will issue a One-Month Notice to end the tenancy, on August 1st for a September 1st move-out date. That upstairs tenant informed the landlord that "it's actually 4 months [notice to end tenancy term] for a tear down, and notice is given only once all of your permits are awarded." Also: "[The tenant] will likely have a much harder time finding a suitable place so they may (or may not) need the full 4 months to search." The landlord responded to this message to say: "we were going on info from project manager and did not know this."

The tenant brings this claim for compensation based on what they perceive as the landlord not acting in good faith by ending the tenancy in this manner, by issuing a Two-

Month Notice. While the document shows the landlord or the landlord's spouse will occupy the rental unit, the landlord did not occupy, then within a very short time began the process of demolishing the rental unit house.

The immediate neighbour to the property provided a letter which the tenant submitted as evidence. This states that neighbour's observations of what occurred at the property since the tenant moved out. This neighbour attended the hearing as a witness, and the landlord in the hearing drew attention to the fact that this neighbour is the mother of the tenant here. The details are:

- since the tenant moved out, the property has been vacant – no furniture was moved in, with the house unoccupied "other than short sporadic visits"
- the close proximity of the two houses enables this neighbour to observe anyone living in the house easily – if the landlord *was* residing in the house, this neighbour would be able to tell
- the landlord made preparations in the latter part of 2020 to demolish the house:
    - October 9: the landlord asked the neighbour to remove a tree on their property for construction of the landlord's new home
    - October 15: appliances moved out from home (photo included in evidence)
    - November 29: BC Hydro removes meter (included photo)
    - December 24: workers digging a hole in the driveway to stop the gas line at the street level (included photo).

In the hearing, this neighbour stated they informed the tenant that the landlord here could not issue a notice for this purpose when their intention was to demolish the house.

Along with the upstairs tenant, the tenant wrote to the landlord on March 1, 2021. This sets out their claim that the landlord did not act in good faith. This lists the points raised by the neighbour (as set out above), their prior messaging on this issue (above). The note the house was vacant for the past six months, with no sign of the landlord residing in either of the rental units. The tenant advised the landlord of their readiness to apply for dispute resolution on this issue.

The landlord replied on March 11:

- they became frustrated with time delays and other obstacles that added cost to the project, preventing them from proceeding
- plans for their parent to move in were further delayed
- they could not proceed in this uncertain time to build a home

- they recently abandoned the plan and decided to purchase another house so that their family can all move in together
- they did not have dishonest intentions with no ulterior motives, “i.e., To remove current tenants with a plan to prosper by moving in new tenants and raising the rent.”
- they offered to compensate the tenant with funds they had “earmarked for dealing with the tree situation. . . that we no longer need to deal with.”

In response to this, on March 15 the tenant was “willing to hearing what [the landlord] feel is reasonable compensation.” To this, the landlord responded that “[they] think probably best if [the tenant] proceed with the original plan of arbitration.”

In the response to these submissions, the landlord in the hearing provided that their intention at the time of issuing the Two-Month Notice was to be moving into the whole house. Subsequently, they did not move in. They present there were extenuating circumstances that arose in the interim, those that prevented them from moving, as well as issues they had with the seller of the residential property.

The landlord purchased the property in April 2019, and submit they were truthful with their design on the property with the tenant here. By summer 2020 the landlord felt they were close to moving forward on the plan, and “felt there was always an understanding of the Two-Month Notice”. They issued the Two-Month Notice with no idea when the city would approve plans; they saw this as an opportunity to live there, with one of their parents.

By the time the tenant left in October 2020, the landlord still had the intention to reside in the property. They thought the pattern of move in – move out – build – move in would not be healthy for their family members that have developmental disabilities. They had meals there and made visits to the house; however, the structure of the house was challenging for one family member.

In October, and into November, things were getting “very tricky” and there were many factors entering into the equation, with concerns about cost and time becoming paramount. This was with no solid information from the city at that time. By mid-November, the landlord decided they would not move in.

Additionally, the neighbour’s tree was causing a change in plans. An arborist provided consultation and a definitive report that stated the neighbour’s tree would need to be removed if the landlord were to accomplish the original design for their home. For the landlord, this entailed making a cash offer to the neighbour for removal of that tree. Failing this, the landlord would look at changing their building design plan.

These factors led the landlord, as they described, to lose focus of accomplishing their design for a dream home on that property. By January 2021 found another property at which to live, then sold the house in March 2021.

Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a landlord issues a Two-Month Notice. This is covered in s. 51:

> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant . . .an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of ending the tenancy, or
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> (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.
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> (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying . . .if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
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> (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.

The onus is on the landlord to prove they accomplished the purpose for ending the tenancy. If this is not established, the amount of compensation is 12 times the monthly rent. A landlord may only be excused from these requirements in extenuating circumstances. This is not a question of good faith; that question is the proper focus when a tenant applies to challenge the actual end of the tenancy and the tenant did not do that here.

In this scenario, I find the landlord did not accomplish the stated purpose for ending the tenancy. The evidence shows they did not use the rental unit for the reason indicated for at least 6 months' duration. I give weight to the witness evidence in the hearing. As shown in the photos, they were in very close proximity to the rental property to observe if it was properly occupied. From this evidence, I find as fact the landlord at no time

occupied the rental unit after the tenant vacated. This means they failed to use the rental unit for the stated purpose as set out in s. 51(2).

The landlord here submits there were extenuating circumstances in place that prevented their move. I find extenuating circumstances affected the landlord's ultimate design on building a new structure on the property; however, this did not impact their ability to occupy the rental unit. There is no evidence that they were set to move into the rental unit or made provisional arrangements to do so. Contrary to the stated purpose on the Two-Month Notice, the landlord had building designs in place, and instead wanted to start the work of demolition.

The *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* gives a statement of the policy intent of the legislation. This describes exceptional circumstances as "matters that could not be anticipated or were outside a reasonable owner's control." Applying this to the current situation involving this end of tenancy, I find the landlord was aware of the setup in the rental unit, and was not prevented from occupying the rental unit house because of the factors affecting their intention to build a new home.

Their failure to ascertain family members' reactions to the house, the permissions from the city, and the placement of a tree on the adjoining property do not constitute exceptional circumstances. Only the first factor is marginally connected, and I find it is not plausible that no early concern for these family members could be in place, with no evidence showing extreme difficulty adapting to the structure of the home. Additionally, the landlord made what I find are tentative visits to the house; however, they did not start a process of moving in. I find the evidence plain that they moved out the appliances a very short time after gaining possession.

Additionally, I find the adjacent tree and the impact of the city's permits are factors affecting the landlord's desire to build, not their ability to move in and occupy the rental unit. I find these are not exceptional circumstances that prevented the landlord from undertaking the purpose of the reason for issuing the Two-Month Notice.

With no extenuating circumstances presented, I find there is nothing precluding my finding that this is a situation where s. 51(2) applies. For this, the landlord must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of $12,000 as claimed by the tenant.

As the tenant was successful in this application, I find the tenant is entitled to recover the $100 filing fee paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of $12,100. I grant the tenant a monetary order for this amount. Should the landlord fail to comply with this Order after the tenant serves it, the tenant may file this monetary order in the Provincial Court (Small Claims) where it may be 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 s. 9.1(1) of the *Act*.

Dated: November 10, 2021

Residential Tenancy Branch