



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- compensation from the landlords related to a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (Notice) issued to the tenant; and
- to recover the cost of the filing fee.

The tenant and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I was provided evidence from the parties including: testimony and written submissions, all of which has been reviewed. Not all evidence has been referenced in this Decision. The principal aspects of the tenant's claims and the landlord's responses and my findings around them are set out below.

Further, I have used my discretion under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 3.6 to decide whether evidence is or is not relevant to the issues identified on the application and decline to consider evidence that I deem is not relevant.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to section 51 of the Act and recovery of the filing fee?

Background and Evidence

The tenancy began on October 1, 2019 and ended on or about July 11, 2021, according to the tenant. The monthly rent at the end of the tenancy was \$2,000, according to the tenant, although the written tenancy agreement did not list a monthly rent obligation. Filed in evidence was a copy of the written tenancy agreement.

The parties agreed that the landlord issued the tenant a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (Notice), which listed an effective date of July 31, 2021. The Notice was dated March 31, 2021. The reason stated in the Notice was that the landlord would demolish the rental unit. Filed in evidence was the Notice.

The Notice listed that the landlord obtained all the permits and approvals required by law to do this work, but no details of the planned work were included.

The tenant's monetary claim is \$24,000 for 12 months' compensation as the landlord has not complied with the Act or used the rental unit for the stated purpose.

In response to the tenant's claim, the landlord submitted their intention was to demolish the residential property, which is located on a bluff in that area. Due to the location of the home on a bluff, the demolition work could only be done between June 1 and September 30 each year because of the unstable nature of the soil and extreme weather. Subsequent to the 4 Month Notice being issue to the tenant and the tenant moving out, the landlords were told by the municipality that they would need to redo their Geotech report before a tree cutting and development permit would be issued. Because of this, the home could not be demolished in the summer of 2021.

The landlords submitted they were unhappy about having to redo the Geotech report, due to the cost of \$20,000. Additionally, the landlord submitted they had the gas line capped and were out of rental income for 3 months. Further, the delay meant that demolition had to be delayed a year.

In the meantime, the landlord submitted that they re-rented the rental unit in September 2021, but did not require the new tenants to pay rent until the gas line was reconnected on October 9, 2021.

The landlord submitted that they had no other option other than re-renting the residential property, as the property could not be demolished as planned in the summer of 2021.

The landlord submitted that as of the day of the hearing, the residential property had not been demolished, but would be shortly.

Evidence filed by the landlord included the revised Geotech report, the document said to be a demolition permit, an email from the local municipality and a gas bill.

In response, the tenant submitted that in his conversations with the landlords, his impression was that they were attempting to sell the home.

The tenant submitted that the landlord has not taken any action to demolish the residential property and a recent inquiry to the local municipality showed that the landlord was never issued a demolition permit. The tenant submitted that the permit application was still under review as of May 26, 2022 and that the municipality representative said the demolition would be at least another year.

Evidence filed by the tenant included an email from a municipality representative addressed to the landlords.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

The undisputed evidence shows that the tenant was issued a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, pursuant to section 49(6)(a) of

the Act. The Notice listed that the landlord had all the permits and approvals required by law to do this work and would demolish the rental unit.

Section 51(2) provides that the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice. In this case, the effective date was July 31, 2021.

Tenancy Policy Guideline (Guideline) states that the landlord has the burden to prove they accomplished the stated purpose within a reasonable period after the effective date of the notice.

As the undisputed evidence is that the rental unit has not been demolished through the date of the hearing, which is 10 ½ months after the effective date of the Notice, I find the landlords must pay the tenant the amount of \$24,000, the equivalent of 12 times the monthly rent of \$2,000.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if 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.

Tenancy Policy Guideline 50E outlines 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. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.

- 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.

In these circumstances, I find the landlords submitted insufficient evidence to show that extenuating circumstances prevented them from using the rental unit for the stated purpose.

While I accept that the landlords were required by the local municipality to provide a revised Geotech report before demolishing the rental unit, the evidence shows it was the landlord's choice to then re-rent the rental unit to other tenants as of September 2021, rather than wait until being able to demolish the rental unit. This is another purpose altogether, unrelated to the purpose stated on the Notice. I find the landlords' financial hardship is not an extenuating circumstance.

As I have found the landlords must pay the tenant compensation equal to 12 times the monthly rent due under the tenancy agreement, and as I have found insufficient evidence of extenuating circumstances preventing them from accomplishing the stated purpose, I find the tenant has established a monetary claim of \$24,000.

I find merit with the tenant's application and award him recovery of the filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order of \$24,100, the equivalent of monthly rent of \$2,000 for 12 months, or \$24,000, and the cost of the filing fee of \$100.

Should the landlords fail to pay the tenants this amount without delay, the tenant may serve the order on the landlords for enforcement purposes. The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$24,000 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$24,100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 07, 2022

Residential Tenancy Branch