Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

J.H. and K.H. appeared as the Applicants. R.L. appeared as agent for the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Are the Applicants entitled to compensation equivalent to 12 time the monthly rent payable under the tenancy agreement?
2) Are the Applicants entitled to the return of their filing fee?

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 Applicants confirm the following details with respect to their former tenancy:

- They moved into the rental unit on July 15, 2020.
- They moved out of the rental unit on March 7, 2022.
- Rent of $2,950.00 was due on the first of each month.

I am provided with a copy of the tenancy agreement by the Applicants. In the tenancy agreement, rent is noted as $2,850.00 with a $100.00 gardening fee. K.H. advised that the extra $100.00 fee was offered by the Applicants to secure the tenancy in a competitive market, though no landscaping services had ever been provided by their previous landlord. The Applicants characterize total rent as inclusive of the gardening fee.

The Respondent's agent advises that the Respondent purchased the property in early 2022, which is a single detached home, taking possession of it on March 27, 2022. The Respondent's agent emphasized there was no landlord-tenant relationship between the Respondent and the Applicants. Given that there was no direct relationship, the Respondent's agent could not confirm the details of the Applicants tenancy with their former landlord. It was argued by the Respondent's agent that given the lack of a contractual relationship between the parties, the *Act* did not apply.

The Respondent is a corporate entity. I was advised by the Respondent's agent that the Respondent is solely owned by M.L.. I am told by the Respondent's agent that he is M.L.'s father. I am also told by the Respondent's agent that the Respondent's intention in purchasing the property was for M.L. to reside there, with a long-term goal of demolishing the house and building a new one.

Both parties have provided me with a copy of a Two-Month Notice to End Tenancy signed on February 10, 2022 (the "Two-Month Notice"), which indicates it was issued on the basis that all the conditions for the sale of the property had been satisfied and the purchaser had asked the landlord to give notice on their good faith intention to occupy the rental unit. Both parties also provide me with a copy of a buyers' notice to seller for vacant possession, signed on February 10, 2022 by a representative for the

Respondent. The Respondent's agent acknowledges the request for vacant possession was signed by the Respondent's representative.

The Respondent's agent advises that the property had been purchased sight unseen. I am advised by the agent that Respondent planned on making cosmetic renovations to the house prior to M.L. moving in such that it would be more liveable for him. The plan was for M.L. to live in the house while planning and approval was undertaken to build the new house at the property, which I understood from the agent's submissions would take some years to finalize. I am further advised that the first time the Respondent's representatives attended the property was on March 30, 2022 and that they discovered that it was not to their standard of liveability, was in a state of disrepair, and had a smell to it.

The Respondent's agent says enquiries were made to conduct those renovations and I was directed to correspondence and an estimate in the Respondent's evidence. The estimate mentioned by the Respondent's agent is dated March 26, 2022 and lists an estimate of $45,000.00 to clean, repaint, and conduct other work. On March 12, 2022, the Respondent's agent, R.L., sent an email to the contractor that provided the repair quote saying "[t]he home is very liveable and certainly can be a place for you to stay with your work crew if you like".

I am advised by the Respondent's agent that upon further investigation hazardous materials were found such that cost for remediating this and conducting the various repairs had been estimated to be $250,000.00. The decision was made to demolish the property rather than conduct any of the temporary upgrades. The Respondent's agent advises that M.L. never moved into the property and that the house had been demolished. The Respondent's evidence includes a demolition permit dated August 31, 2022 and its written submissions indicate demolition occurred in September 2022.

The Respondent's evidence includes various correspondence, including one dated March 30, 2022 sent by R.L. to an employee with the municipality in which the residential property is located. That email states the following:

> Thanks for assisting myself and my son [M.L.] Tuesday afternoon will the paperwork for building/demolition. You were kind enough to greet us as a drop in at the front counter. Appreciate if we have any questions we can give you a call.

I have redacted M.L.'s name from the reproduction above in the interest of his privacy. Further reproductions below will similarly redact personal identifying information.

The Respondent's evidence also includes correspondence with a hazardous material assessment company. The exchange begins with an email sent by R.L. to the company on March 30, 2022 and states the following:

> Attached is the oil tank and soil remedial work on the property. Again the address is [ADDRESS] in [MUNICIPALITY]. Attached a front and back picture. Lock box on the wall by the front door [NUMBER] is the code. Keys open the front door. The power and water are shut off. Can be turned on in the basement. Once you're complete with your report, [R.] from [R.R.] can do the removal and demolition of the house. Please feel free to call me anytime or [M.L.] at [PHONE NUMBER].

The Respondent's evidence also includes an email sent by R.L. to R. with R.R. mentioned in the email above dated April 12, 2022, in which R.L. sent the following:

> Have attached the Hazmat Survey report from [the hazardous material assessment company]. I see that also copied you. Could I get a price from you for the hazmat work and house removal please as soon as possible. There is a lock box by the front door, code is [NUMBER]. Power and water are turned off in the basement.

Further correspondence is also provided by the Respondent, all of which is with various contractors with respect to preparing the site for demolition.

The Respondent's agent emphasized that M.L. had every intention to live at the property but that circumstances had changed such that the timeline for the demolition of the property was accelerated due to the condition of the house and the cost for tempr

The Applicants deny the property was in poor condition, emphasize that they lived there with their children for nearly two years, and that they were happy to live there. I am further advised by the Applicants that had they not been served with the Two-Month Notice, they would have continued to live in the rental unit. It was argued by the Applicants that the property may not have been up to the standards of the purchaser's shareholder, but that if that were so the Respondent ought to have served a Four-Month Notice to End Tenancy for demolishing the rental unit. Finally, it was argued that the

Respondent's lack of planning on the cost for renovations and the ballooning cost estimates are not extenuating circumstances within the meaning of Policy Guideline #50.

Analysis

The Applicants seek compensation equivalent to 12 times the rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Dealing first with the argument raised by the Respondent that there was no landlord-tenant relationship such that the *Act* does not apply, I note that the wording of s. 51(2) makes specific reference to "the landlord or, if applicable, the purchaser". When viewed in the context of s. 49(5) of the *Act*, which is the provision in which the Two-Month Notice was issued, it is clear that it is not material that there was no contractual landlord-tenant relationship between the parties. The *Act* clearly applies to the present circumstances. If not, it would lead to the absurd result that a tenant whose tenancy was ended at a purchaser's request could not seek recourse for compensation under s. 51(2) of the *Act*. This is both contrary to the plain wording of the relevant sections of the *Act* and the overall scheme established by those sections, which is to ensure tenancies are properly ended for landlord or purchaser use and, when if they are not, compensation for breach of the stated purpose in the notice to end tenancy. I find I have jurisdiction to adjudicate this dispute.

I accept that the applicant tenants were served with the Two-Month Notice and vacated the rental unit after being notified to do so. It is admitted that the Respondent is solely owned by M.L. such that the Respondent falls within the definition of a family corporation as set out in s. 49(1) of the *Act*. Given this, once the Respondent requested vacant possession due to its sole shareholder's intention, in this case M.L., to move into the rental unit, and the Applicants were given the Two-Month Notice, the *Act* baked in the Respondent's course of action: M.L. should have moved into the property. In this

instance, there is no dispute that M.L. did not move into the house and it was instead demolished to allow for the redevelopment of the property. The stated purpose for ending the tenancy within the Two-Month Notice clearly was not fulfilled.

In these circumstances, a landlord or purchaser may only escape liability by application of s. 51(3) of the *Act*, which permits the Director to excuse a claim under s. 51(2) if extenuating circumstances are present which prevent the purpose stated in the notice to end tenancy from being fulfilled. As noted by the Applicants, Policy Guideline 50 provides guidance on what may constitute extenuating circumstances. It states the following:

> **F. EXTENUATING CIRCUMSTANCES**
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> The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.
>
> These are 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.
> - A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
> - A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.
>
> 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.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

Leaving aside the Respondent's argument that circumstances have changed, it is not clear to me that there was ever any plan other than to demolish the property. The Respondent's agent advises that the property was purchased sight unseen, only being viewed on March 30, 2022, three days after the Respondent took possession. On the same day, enquiries were made with the local municipality on the permitting process and R.L. contacted an environmental assessment company on identifying hazardous materials. Once the survey was completed, the report was sent to another contractor on April 12, 2022 requesting a quote on removing the hazardous materials and demolishing the house. Though a quote was requested for repairs and some upgrades to the property on March 12, 2022, this goal was never pursued as the Respondent's correspondence shows that from at least March 30, 2022 onwards, the goal was to demolish the house.

I provide this context because I found the Respondent's explanation for why M.L. did not move into the rental unit, which was argued to be due to increasing costs on temporary renovations, to lack credibility. It is clear based on the Respondent's own evidence that the plan was to purchase the property sight unseen, demolish the house, and rebuild. It may be that M.L. will move into the rebuilt house or perhaps the Respondent will sell the property. In either event, it does not matter. M.L. did not move in as stated in the Two-Month Notice. The house was demolished, which appears to have likely been the plan from the outset. The Applicants are quite right, if the plan was to demolish from the outset, a Four-Month Notice to End Tenancy for demolition of the rental unit, issued under s. 49(6) of the *Act*, ought to have been served.

I would further add that even if were to accept the Respondent's arguments that costs increased such that it made more sense to accelerate the demolition timetable, this is not an extenuating circumstance. The guidance within Policy Guideline 50 is clear that the application of s. 51(3) of the *Act* is only for circumstances where it would be unreasonable or unjust due to circumstances outside an owner's control. Examples are provided such as the death of the person to occupy the rental unit or the destruction of

rental unit in a wildfire. It does not include that a property purchased sight unseen had a funny smell or was not up to the standards of a would-be occupant. Lack of due diligence by the Respondent is not an excuse nor is it an extenuating circumstance. I accept that the Applicants had been living in the rental unit for nearly two years with their children, that they were happy to do so, and that they only vacated after having been served with the Two-Month Notice. I further accept that the house was "very liveable", as stated by R.L. in his email to the renovation contractor on March 12, 2022.

I find that the Respondent has failed to establish that the purpose stated in the Two-Month Notice has been accomplished, admitting that it had in fact not been. I further find that there are no extenuating circumstances to excuse the Respondent from liability.

The Applicants are entitled to compensation under s. 51(2) of the *Act* equivalent to 12 times the rent payable under the tenancy agreement. Though the tenancy agreement lists a $100.00 gardening fee, I accept that this was treated as rent, being noted as the monthly total to be paid. I further accept that no gardening services were provided such that the fee is to be construed as rent. I find that rent was payable in the amount o $2,950.00 as set out in the tenancy agreement such that the Applicants are entitled to compensation totalling $35,400.00 ($2,950.00 x 12).

Though this amount exceeds the small claims limit imposed by s. 58(2) of the *Act*, I note that s. 58(2)(a) specifically excludes claims under s. 51(2) such that the Residential Tenancy Branch's jurisdiction is not caped at the $35,000.00 limit imposed by the *Small Claims Act* and *Small Claims Court Monetary Limit Regulation*. This interpretation is further supported by the guidance provided in Policy Guideline 27.

Conclusion

The Applicants are entitled to compensation under s. 51(2) of the *Act* totalling $35,400.00.

The Applicants were successful in their application. I find that they are entitled to their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Respondent pay the Applicants' $100.00 filing fee.

Pursuant to ss. 51 and 72 of the *Act*, I order that the Respondent pay **$35,500.00** ($34,400.00 + $100.00) to the Applicants.

It is the Applicants responsibility to serve the monetary order on the Respondent. As the monetary order exceeds the small claims limit, the Applicants may enforce the order by filing it with the BC Supreme 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 *Residential Tenancy Act*.

Dated: March 01, 2023

Residential Tenancy Branch