



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNL

Introduction

This Dispute Resolution hearing was convened to deal with two joined applications submitted by neighbouring tenants seeking an order to cancel Two-Month Notices to End Tenancy for Landlord's Use dated March 30, 2009 and effective May 31, 2009. The landlord, agent of the landlord, the tenants and counsel for the tenants appeared and gave testimony in turn.

Issue(s) to be Decided

The tenant was seeking to cancel the Two-Month Notice for Landlord's Use. Therefore the issues to be determined based on the testimony and the evidence are:

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances?
 - Has the landlord furnished proof that it is necessary for the unit to be vacant to complete repairs?
 - Has the landlord furnished proof that the unit will be converted to nonresidential use
 - Has the landlord furnished proof that it has obtained all of the necessary permits and approvals for both of the above?

- Has the landlord furnished proof that the good faith requirement has been met?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was warranted and supported under the Act.

Preliminary Issue

At the outset of the hearing, the landlord testified that it was now only seeking to end the tenancy for landlord's use on the basis that the landlord intended in good faith to convert the two rental units to nonresidential use under section 49(6)(f). The landlord stated that it was no longer seeking to end the tenancy for landlord's use on the basis that the landlord intended to renovate or repair the rental unit in a manner that requires the rental unit to be vacant under section 49(6)(b). The landlord stated its intention to amend the notice to remove the request under section 49(6)(b). A Dispute Resolution Officer has the authority to amend a Notice on application by the issuer. However, these proceedings were convened on the *tenant's* application, not the landlord's. The landlord did not have an application before me and in this instance the landlord was the respondent. Therefore the landlord's request to amend the Two-Month to End Tenancy could not be considered. The landlord stated that it would therefore not be presenting evidence for the purpose covered by section 49(6)(b) and would only be presenting evidence to support ending the tenancy for the purpose of converting the units to non-residential use.

Background and Evidence

The tenancy for one of the applicants began on March 1, 1989 having rent of \$1,772 and the tenancy for the other applicant began on March 15, 2000 for which rent was \$2,288.

The landlord stated that it planned to install a swing stage free-standing platform to carry out spalding on the exterior surface of the building which the landlord described as repairing damage to the outside area of the building. The landlord testified that there were no permits required to do this kind of repair work. The landlord testified that engineers and contractors were consulted in regards to the need for these remedial measures. None of this alleged documentation was placed in evidence. However, the landlord had included numerous photos and diagrams of the building. Prior to elaborating on the details of the proposed conversion of the two adjacent units to nonresidential use, in the midst of testimony, the landlord's agent suddenly requested time to consult with the owner. This opportunity was granted and the proceedings were stopped.

Upon rejoining the conference call, the landlord stated that the Two-Month Notice was being withdrawn. However, a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. A mediated discussion ensued and it was determined that the Notice would be cancelled on consent of the parties with the costs of the application being bourn by the respondent landlord.

Conclusion

Based on the above and with the consent of both parties, I hereby order that the Two-Month Notice to End Tenancy for Landlord's Use dated March 31, 2009 is permanently cancelled and of no force nor effect.

I order that the landlord reimburse the tenants for the cost of the application and that each tenant may reduce the rent for the month of May, 2009 in the amount that each had paid to make her or his application as a one-time abatement of \$50.00 and \$25.00 respectively.

June 2009

Date of Decision

Dispute Resolution Officer