



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use. The tenant, an agent for the tenant and an agent for the landlord all participated in the teleconference hearing.

Issues(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On November 26, 2009 the landlord served the tenant with a notice to end tenancy for landlord's use. The notice indicates that the reason for ending the tenancy is as follows: "The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use."

The landlord's evidence regarding the notice was as follows. The landlord intends in good faith to convert the rental unit to commercial use for a coffee shop. The tenant has been aware of the landlord's intention since March 2009. On November 26, 2009, the landlord attended a city council meeting and received re-zoning approval to convert the rental unit to commercial zoning. At the meeting, the landlord stated that he intended to convert the unit into a coffee shop. The landlord believed that he only required the city's re-zoning approval in order to serve the tenant with the notice to end tenancy, and he served the notice on November 26, 2009 after receiving that approval.

The landlord submitted his application for building permits on December 10, 2009, and he received the permits on January 15, 2009. The landlord submitted that in reading the reason for ending the tenancy, the emphasis ought to be on “convert,” and this reading of the Act would not require the landlord to have building permits before serving the tenant with the notice to end tenancy.

The response of the tenant was as follows. The notice is not valid because the landlord is required to have all necessary permits and approvals before serving the notice. The landlord’s re-zoning approval was based on his presentation at the city council meeting of his intention to convert the unit into a coffee shop, and in order to carry out that conversion the landlord clearly would have required building permits. The landlord was aware that building permits were required, but he served the notice to end tenancy before he had applied for the necessary building permits.

Analysis

I accept the evidence of the landlord that he served the notice with the good faith intention to convert the unit for non-residential use. The issue I must address is whether the landlord was required to have building permits in place before issuing the notice .

Section 49(6)(f) of the *Residential Tenancy Act* states that a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use. Section 12.10 of the Residential Tenancy Guide Book states that a landlord must have all required government permits and approvals in place before issuing a notice to end tenancy for converting the rental unit for non-residential use.

In considering the evidence and submissions of the landlord and the tenant, I find that the tenant's interpretation of the Act is the correct one. The landlord clearly required building permits in order to carry out the conversion of the rental unit to a coffee shop.

The notice to end tenancy is not valid because the landlord did not have the necessary building permits in place before serving the tenant with the notice to end tenancy.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant's application was successful, he is entitled to recovery of the \$50 filing fee for the cost of his application. The tenant may therefore deduct \$50 from his next month's rent.

Dated: January 19, 2010.

Dispute Resolution Officer