

DECISION

Dispute Codes: CNL, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for landlord's use of property. The tenant also applied for a monetary order to recover the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on September 15, 2007. The monthly rent is \$750.00 due on the first day of each month. The rental unit is located in a three storey building that houses a total of six rental units. The tenant occupies unit #4 which is located directly above unit #3. The building is over 50 years old and for the last three years, there have been ongoing problems with the plumbing.

The landlord has carried out repairs several times over the years, but the problems keep returning. One of the problems is seepage of water from unit #4 down into unit #3. In September 2009, the landlord did major repairs to the pipes, walls and ceilings of the two units. Despite the repairs, the leaks reappeared six to eight months later. The landlord also did an overhaul of the outdoor perimeter drainage but this did not stop the indoor leaks. The landlord now recognizes that there is a systemic problem with the plumbing that needs major repair work which may require the units to be vacant for the duration of the repairs.

The landlord hired a plumbing company for an estimate. The plumbing company indicated in their quote that the price would increase substantially if the presence of the tenant interfered with their schedule. The landlord served the tenant with a two month notice to end tenancy for landlord use of property. The reason as checked off on page

two of the notice is “*The landlord has all the necessary permits and approvals required by law to repair the rental unit in a manner that requires the rental unit to be vacant*”

The tenant made some enquiries at the local Municipal Office and found out that the landlord had not applied for the required permits. The landlord agreed that she did not have the permits in place at the time she served the notice on the tenant.

Analysis

Pursuant to section 49(6)(b) the landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law and intends in good faith to repair the rental unit in a manner that requires the rental unit to be vacant. Based on the testimony of both parties, I find that while the building is in dire immediate need of repairs to prevent further problems with leaks and mould, the landlord does not have the required permits to conduct the repair work.

Accordingly, I allow the tenant’s application and set aside the landlord’s notice to end tenancy dated May 31, 2010. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may recover her filing fee by making a onetime deduction of \$50.00 from next month’s rent.

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: July 20, 2010.

Dispute Resolution Officer