



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, RP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end the tenancy and for an order to have the landlord make repairs.

The hearing was conducted via teleconference and was attended by the tenant and two of the landlord's agents.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; for an order to have the landlord make repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The 6 year old tenancy is a month to month tenancy for a monthly rent of \$504.00 due on the 1st of the month, with the tenant is responsible for utilities.

The tenant has submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued by the landlord on July 30, 201 with an effective dated of September 31, 2010.

The landlord's agent provided testimony that confirmed the landlord plans to fix and upgrade the hydro in this rental unit, as well as address leaky plumbing in the bathroom including replacing and updating all the bathroom fixtures. In addition the landlord will complete repairs to walls resulting from the additional repairs and any other repairs such as windows that require replacement.

The agent confirmed the landlord has the necessary permits for the electrical work but did not provide documentary evidence of the permits. The agent suggests the work will take 2 to 3 months to complete. The agents provided additional testimony that similar work had been completed in two other units that were vacant during the renovations, as the work had been completed in between tenancies.

The landlord's agent has indicated that should the notice to end tenancy be upheld she has several other units at different residential properties available that the tenant could consider moving into. The price range of these other units is from \$600.00 to \$900.00 utilities included.

The tenant contends that when the work was completed in the other two units in the residential property the units were not vacant. The tenant goes on to say that he is currently working out of town during the week and so in essence is not there the majority of the time. He also testified that he could stay with family for those times he was back in town but could not use the rental unit.

The tenant also testified that he would move his belongings into storage to ensure contractors completing the work would have appropriate access to what they needed. The agent did not think this would work as the tenant has many belongings and it is difficult to move around in the rental unit.

Analysis

Despite the landlord's failure to submit documentary evidence regarding the planned renovations I accept that the landlord intends, in good faith, to complete these renovations to the rental unit.

Section 49 of the *Act* does allow a landlord to end a tenancy with a 2 month notice if the landlord has all the necessary permits and approvals required by law, and in intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. If the work requires the rental unit to be vacant, it must be determined if the length of time required to be vacant justifies terminating the tenancy.

While the landlord indicated there is extensive work to be completed and that the electrical work requires access to the entire rental unit, I find that the only time renovations require a vacant unit, from the agent's description of the work to be done, will be when the bathroom fixtures are being replaced.

This work should not require the entire 2 to 3 months to complete that the landlord has allotted to the project. As the tenant has already indicated he works out of town during the week so on a weekly basis the landlord would have 5 days to complete any of the most invasive work. In addition if the work required going over a weekend the tenant has available to him alternate accommodation.

I acknowledge that to complete the scope of work the landlord is planning with a tenant still in possession of the rental unit requires substantial cooperation from the tenant. Not only does the cooperation include being away from the rental unit but also ensuring the rental unit itself is left in a manner that does not impede the progress or work of the landlord's contractors. This may include moving possessions out of the unit and into storage at the tenant's own expense.

I find the landlord has failed to show that the renovations and repairs planned require the rental unit to be vacant for a period of time that would warrant ending the tenancy. Having said this, should the tenant retain possession of the rental unit I order that he comply with the landlord's requirements to be away from the rental unit and ensure the rental unit is prepared to the requirements directed by the landlord and/or their contractors and in accordance with the landlord's project timetable.

Should the tenant fail to comply with this order the landlord would be at liberty to consider ending the tenancy in accordance with Section 47(1)(l) of the *Act*. This section stipulates the landlord may end a tenancy if the tenant has not complied with such an order.

Conclusion

Based on my findings above, I grant the tenant's application to disregard the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on July 30, 2010 and find the tenancy in full force and effect.

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: September 23, 2010.

Dispute Resolution Officer