



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, ERP, FF

Introduction

This is the Tenants' Application to cancel a Notice to End Tenancy; for an Order that the Landlords make emergency repairs to the rental unit; and to recover the cost of the filing fee from the Landlords.

Both parties gave affirmed testimony.

During the course of the Hearing it was determined that this is the second application that the Tenant has filed with respect to a request for an Order for **the same** emergency repairs. The first application resulted in an Order being issued on February 16, 2011. That Order has been suspended subject to a Review Hearing which is taking place on March 30, 2011. Therefore, I decline to make any Order with respect to the emergency repairs sought.

Issue(s) to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property issued February 28, 2011, be cancelled?

Background and Evidence

The Tenants submitted into evidence a copy of a tenancy agreement signed by the

parties on December 3, 2005. Monthly rent is \$1,200.00 due on the 1st of the month. A security deposit in the amount of \$600.00 was paid at the beginning of the tenancy.

The Tenants also submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued February 28, 2011 (the "Notice"). The Landlord seeks to end the tenancy because, "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The Landlords did not submit any documentary evidence.

The Landlord and his agent gave the following testimony:

The rental unit is adjacent to a place of worship and another rental unit. The Landlord is performing major renovations on the place of worship and wishes to totally gut the rental unit and the other rental unit on the property at the same time in order to save some money.

The Landlord will be redoing the exterior and interior, including renovating the kitchen and the three bathrooms in the rental unit. The Landlord will "probably" be redoing the flooring as well. There have been no repairs done for the five years the Tenants have lived in the rental unit and it is in need of these repairs. The Landlord does not require permits or approvals in order to do the work.

The Tenant gave the following testimony:

The Tenant does not believe the Notice was issued in good faith. She believes that the Landlord has an ulterior motive for ending the tenancy. She is suspicious of the timing that the Notice was issued (just after the last Notice was cancelled). The Tenant does not believe the Landlords have any intention of making repairs to the rental unit, as nothing has been done in 5 years except for replacing a hot water tank. The Landlord

told her that they could not afford to do repairs, but now they are seeking to end the tenancy because they want to make the repairs. The Landlord stated that he would be gutting both houses on the rental property, but the Tenant is a friend of the other tenant and the other tenant has not been issued a Notice to End Tenancy. The Landlord testified that there are three bathrooms in the rental unit, but there are only two.

Analysis

Section 49 of the Residential Tenancy Act (the “Act”) allows a landlord to end a tenancy if the landlord intends, in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Tenant has questioned the “good faith” intention of the Landlords, and therefore the burden is on the Landlords to establish, on the balance of probabilities, that they truly intend to do what they indicated on the Notice, and that they do not have an ulterior motive for ending the tenancy as a primary motive.

The Landlords did not provide any documentary evidence, or sufficient testimony, to establish the scope of the repairs at the rental unit. The Landlord was very vague about what repairs would be done, and therefore I cannot determine that the Tenants would have to vacate the rental unit in order for the repairs to be done. When questioned by me, the Landlord did not provide any details with respect to work to be done (i.e. any electrical work, plumbing, structural work, etc., that would require permits). The Tenant contradicted the Landlord’s testimony with respect to the number of bathrooms in the rental unit. The Landlord did not dispute that contradiction. The Landlord stated that all of the bathrooms would be redone, but did not appear to know how many bathrooms there were. There appears to be no plan in place for the repairs that the Landlords seek to do.

Based on the testimony of both parties, I find that the Landlords have not established that they intend to do renovations or repairs at the rental unit that would require the

rental unit to be vacant, or at all. Therefore, the Tenants' application to cancel the Notice is granted. The 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 28, 2011 is cancelled. The tenancy remains in full force and effect until it ends in accordance with the provisions of the Act.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct the amount of \$50.00 from future rent due to the Landlords.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property issued February 28, 2011 is cancelled. The tenancy remains in full force and effect until it ends in accordance with the provisions of the Act.

I authorize the Tenants to deduct \$50.00 from future 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: March 21, 2011.
