



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking cancellation of a 2 Month Notice to End Tenancy for the landlord's use of property and to recover the filing fee paid for the application.

The parties appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant is entitled to an order cancelling the Notice to End Tenancy and to recover the filing fee?

Background and Evidence

This month to month tenancy started on January 1, 2011, monthly rent is \$800.00, and the tenant paid a security deposit of \$400.00 on or about August 31, 2011.

I heard testimony that the landlords occupy the upper portion of a home and the tenant's rental unit is in the lower part of the home.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued February 24, 2012, according to the landlord's testimony, and requiring the tenant to vacate the rental unit by April 30, 2012. The reason indicated on the Notice is that the landlords have 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.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing and testified as to why the tenant had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

In support of his Notice, the landlord submitted that he made a water damage claim with his insurance company in 2011. As a result of the claim, the landlord submitted that he received notification from his insurance company that until he replaced all the piping in his home, his deductible would increase to \$5,000.00. Additionally, according to the landlord, neither his current insurance company nor any other insurance company would insure him beyond 2013 unless he replaced all the piping in his home.

The landlord submitted he could not afford to hire a professional plumber to replace the piping and therefore he intended on doing the work himself. To be able to perform the work himself, the residential property would be required to convert to a single family dwelling. Due to this, the landlord stated that it was necessary for the tenant to be evicted.

The landlord submitted that although a permit is required for the replacement of the piping, he could not obtain the permit for doing the work himself until the residential property was converted to a single family dwelling.

When questioned, the landlord stated that he thought the piping replacement project would take approximately four weeks. When asked how he arrived at this figure, the landlord stated that he estimated that time based upon his experience as a drywall installer.

When questioned, the landlord stated that he had no experience in re-plumbing a whole house, although he contended that he had plumbed a trailer and had installed the basement suite.

The landlord's relevant evidence included a statement from the municipality regarding the permits, a receipt for some plumbing supplies and statements from his insurance company.

In response, the tenant called into question the landlord's good faith, claiming the landlord had ulterior motives in issuing the Notice as she has been asked to leave several times once she made repair requests and to respect her rights to quiet enjoyment.

The tenant also pointed to her evidence of a statement from a plumber with 24 years' experience, who estimated the time frame to be three weeks to open walls, replace the plumbing and refinish the walls. The statement from the plumber also put forth his opinion that replacing the pipe should not require someone to move out.

The tenant's relevant evidence also included photos of the outside of the rental unit and copies of her written requests to the landlords concerning her quiet enjoyment of the rental unit and repairs.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Notice was issued pursuant to section 49(6)(b) of the *Act*, which requires the landlord to have all necessary permits and approvals, and a good faith intention, to use the unit for the stated purpose, i.e., renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In reviewing the evidence, I find the landlord provided insufficient evidence to meet his burden of proof in supporting the Notice. In reaching this conclusion, I relied upon the landlord's statements that although he intended to perform the plumbing work himself, he was inexperienced in a project of this nature, which caused me to doubt his time frame for completing the project. The only evidence submitted which conclusively addressed a time frame was the tenant's submission from an experienced plumber, who estimated that the project should take no more than three weeks.

In addition, the landlord submitted insufficient proof that the rental unit was required to be vacant when the work was being performed. Again the proof submitted was the tenant's submission from the licensed plumber, who stated that it was not necessary for vacant possession for this type work.

I therefore find that the landlord submitted insufficient evidence to prove that the rental unit was required to be vacant.

Additionally, the *Act* requires that the landlord issuing this Notice have in place all the necessary permits prior to issuing the Notice, which the landlord confirmed he had neither applied for nor obtained.

The testimony and evidence leads me to conclude that the landlord's main objective in issuing the Notice was to save money, which is not the responsibility of the tenant and which I do not find sufficient under the *Act* to end a tenancy.

Therefore, I find the landlord submitted insufficient evidence to prove the reason listed on the Notice.

Based on these findings, I find that the 2 Month Notice to End Tenancy for landlord's use of property, dated February 24, 2012, issued to the tenant is not

valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the Act.

As I find merit with the tenant's application, I award her recovery of the filing fee in the amount of \$50.00. In satisfaction of this monetary award, the tenant is directed to withhold the amount of \$50.00 from the next, or a future month's payment of rent.

In the event the tenancy end for some other reason prior to the tenant being able to deduct this amount from a monthly rent payment, the tenant may seek issuance of a monetary order through the Residential Tenancy Branch.

As I have cancelled the Notice based upon the landlord's insufficient evidence in supporting the Notice, I did not address and therefore make no findings on the tenant's allegations that the Notice was issued in bad faith.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of the Property is cancelled and the tenancy continues until it may otherwise end in accordance with the Act.

The tenant is awarded recovery of the filing fee, and is allowed to deduct \$50.00 for the next, or a future 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: March 16, 2012.

Residential Tenancy Branch