



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Final Girl Productions Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received the landlord's 2 Month Notice sent by the landlord by registered mail on or about December 26, 2013. The landlord's agent (the agent) testified that the landlords received a copy of the tenant's dispute resolution hearing package sent by registered mail on January 7, 2014. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the commencement of the hearing, both parties confirmed that the only written evidence either of them had submitted was the tenant's provision of his two-page proof of service regarding his registered mailing of his dispute resolution hearing package to the landlords. The agent confirmed that the landlords have not submitted any separate application for dispute resolution and were not asking for anything at this hearing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The agent gave undisputed sworn testimony that this tenancy began as a one-year fixed term tenancy and subsequently converted to a periodic tenancy. Monthly rent is set at \$3,750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,875.00 security deposit.

Although neither party supplied any copy of the landlord's 2 Month Notice, the issue under dispute, the agent confirmed that the 2 Month Notice was issued because the landlords need the tenant to vacate the premises while they undertake repairs that could not be completed without the tenant vacating the rental unit. At the hearing, the agent described the scope of the repairs planned for this strata unit, but maintained that the only approvals or permits needed to conduct these repairs was a permit issued by the strata council from a date prior to the commencement of this tenancy. He testified that no municipal permits are required for the renovations planned to this strata rental unit.

The tenant maintained that building permits were required from the municipality and municipal approval is particularly necessary when retaining walls are removed or modified. He said that the strata permit referred to by the agent is no longer valid and was issued before he began his tenancy. He also testified that he had texts and emails from one of the landlords, in which she advised him that she was selling the strata unit. He testified that he has email and text evidence that the landlords have tried to sell the strata unit to him and that the landlords are not acting in good faith in the reason selected on their 2 Month Notice. The tenant maintained that he should be entitled to more compensation from the landlords than the one month of free rent that he was provided for February 2014, in anticipation of his tenancy ending by March 1, 2014, the effective date of his 2 Month Notice.

Analysis

When a tenant applies to cancel a notice to end a tenancy, the burden of proof rests with the landlord to establish that the reasons identified in the notice to end tenancy are valid and constitute sufficient grounds to end that tenancy.

In this case, for whatever reason, neither party believed it necessary to enter into written evidence a copy of the 2 Month Notice, the primary document in dispute with respect to this tenancy. However, I did hear undisputed sworn testimony that the stated reason for the issuance of the 2 Month Notice was that "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."

Without a copy of the 2 Month Notice or any written evidence with respect to the permits obtained by the landlord or whether the agent was correct in maintaining that the only permit required was a permit from the strata council, I have little reliable evidence with which to consider the agent's claim that the landlords were within their rights to issue the 2 Month Notice. I find the tenant's sworn testimony also lacking without any written

evidence to support his claims regarding the requirements regarding permits for the type of work planned by the landlords.

In essence, the agent has asked me to accept that the landlords' planned renovations are so significant that the tenant cannot remain in the rental unit. However, the agent also maintained that these same renovations are not so significant as to require anything more than a permit from the strata council issued over a year ago, which the agent claimed, and the tenant disputed, was still in effect.

Under these circumstances and without more reliable evidence from the landlords, I find that the landlords have not satisfied the burden of proof required to demonstrate that the 2 Month Notice issued to the tenant was sufficient to enable the landlords to end this tenancy for landlord's use of the property. For these reasons, I allow the tenant's application and I dismiss the landlords' 2 Month Notice.

As the tenant has been successful in this application, I allow the tenant to recover the \$50.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice is of no force or effect. This tenancy continues.

As the 2 Month Notice is no longer of any force or effect, the original terms of this tenancy agreement remain in effect. Based on the evidence before me, this would require the tenant to pay a monthly rent of \$3,750.00, payable on the first of each month. As there is undisputed testimony from both parties that the tenant has not paid rent for February 2014 and this rent is now due, I allow the tenant to reduce the amount of rent now outstanding for February 2014 by \$50.00 for this month only from \$3,750.00 to \$3,700.00. The monthly rent returns to \$3,750.00 as of March 1, 2014.

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: February 21, 2014

Residential Tenancy Branch

