



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his advocate, the landlord and his agent.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

At the outset of the hearing the tenant's advocate identified that the landlord had issued a second 2 Month Notice to End Tenancy for Landlord's Use of Property on February 10, 2015 that provided an effective date of May 1, 2015 but that the tenant did not submit an Application for Dispute Resolution to dispute the second Notice as he was waiting for the outcome of this hearing. The landlord confirmed that the second Notice was issued in response to the identification by the tenant that the effective date on the first Notice was incorrect.

As both notices relate to the same issues I amend the tenant's Application for Dispute Resolution to include adjudication the validity of both Notices.

Issue(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 and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submits the tenancy began in the fall of 2010 as a month to month tenancy for a current monthly rent of \$500.00 due on the 1st of each month. The landlord confirmed as many details as possible but also indicated that he only purchased the property in 2014.

The tenant submitted into evidence the following documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on January 23, 2015 with an effective date of January 23, 2015 citing the landlord has all necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires the rental unit to be vacant; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 10, 2015 with an effective date of May 1, 2015 with no reason to end the tenancy identified on the Notice.

The landlord confirmed during the hearing that the second page of the Notice issued on February 10, 2015 does include any chosen reason for ending the tenancy because he was only issuing the second notice to correct in the incorrect effective date of the January 23, 2015 Notice.

The landlord submitted that the work to be completed includes changing of flooring as well as the refurbishment of the kitchen and bathroom and the possible reduction from a 2 bedroom to a 1 bedroom rental unit.

The landlord also submitted that while they had not identified to the local municipal offices the specific address that they were completing the work at municipal authorities have confirmed that no permits are required for the scope of work intended to be completed, with one exception.

The landlord intends to install a new furnace and will require electrical work to be completed that will require a permit. The landlord submitted that the permit required can be obtained on the date that the work is to be completed and an advance permit is not required.

The tenant submitted that because the landlord had not identified the specific address to the municipal authorities the landlord cannot say for certain if any specific permits would be required for the work. Further the tenant is of the position that obtaining the electrical permit only on the day that the work needs to be completed is insufficient and it may result in a situation that would require the landlord to complete additional electrical work at great expense that the landlord is not willing to undertake.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser

asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;

- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the *Strata Property Act*;
 - iv. Convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

In relation to the Notice issued on February 10, 2015 I note that from the landlord's testimony no reason was provided to end the tenancy. As such and pursuant to Section 52 I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 10, 2015 is ineffective and not enforceable.

While the landlord must provide sufficient evidence and/or testimony to establish that they have a valid reason to end a tenancy, the tenant, when disputing such a reason also has the burden to provide sufficient evidence of their position as to why a Notice to End Tenancy should be cancelled.

In the case before me the tenant questions the landlord's position that he does not require any permits except for an electrical permit which the landlord indicates can be obtained the day it is required. However, the tenant has provided no evidence as to what local bylaws are; if a permit is required; or the time that a permit is required.

As such, I find the tenant has failed to provide sufficient evidence that the landlord has failed to obtain all permits required by law to complete the renovations the landlord intends to complete. As such, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property is effective and enforceable.

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that complies with the relevant Section.

As the landlord had identified the effective vacancy date of the January 23, 2015 Notice to be effective January 23, 2015, I find the effective vacancy date does not comply with the requirements under Section 49 that notice issued under this section must not be effective until at least 2 months after receipt of the Notice.

Pursuant to Section 53 of the Act, I find the effective date of the January 23, 2015 Notice to be March 31, 2015.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 06, 2015

Residential Tenancy Branch

