



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, FF, OLC

Introduction

This hearing dealt with an application by the tenant seeking more time to file their application, an order to have the 2 Month Notice to End Tenancy for Landlord's Use of Property set aside, an order to have the landlord comply with the Act, regulation or the tenancy agreement, and the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord gave the following testimony:

The tenancy began sometime in 1989. The tenant lived in different units in this complex but has resided in the subject unit since July 2005. Rent in the amount of \$400.00 is payable in advance on the first day of each month. The landlord stated that he has been attempting to sell the building for over a year. The landlord stated that he received a lot of negative feedback on the condition of the subject unit and another unit in the complex. The landlord stated that he decided to renovate the units to make selling the building easier. The landlord stated that he conducts much of the renovations on his own.

The landlord stated that he's not sure how long the renovations will take but feels that the unit must be empty to conduct them. The landlord stated that he has to schedule the work around his own job so the timeline for completion is open ended. The landlord stated that they issued the notice on the basis "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". The landlord stated that at this time there are no permits for repairs but may attempt to obtain one once he starts the work and sees the extent of repair and renovation required.

The tenants' agent gave the following testimony:

The agent stated that she is the tenants' sister and has power of attorney over him. The agent stated that the landlord had been dealing directly with her for years in regards to her brother but chose not to advise her of this notice. The agent stated that she tried to discuss this matter with the landlord and asked for an extension of time for her brother to move out, but was denied. The agent stated that she applied for dispute resolution the day she discovered the notice. The agent stated that the landlord does not have any permits in place so the notice is invalid. The agent stated that the landlord hasn't provided a clear detailed outline of what they will be doing in the unit. The agent asks that the landlord comply with the Act and that if he issues a notice it must be in good faith and is of a valid reason.

Analysis

When a landlord issues a notice under Section 49 of the Act, they bear the responsibility of providing sufficient evidence to support the notice. The landlord issued the notice on the grounds "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".

The landlord has not provided sufficient evidence to uphold the notice. The reasons the landlord has failed to satisfy me is that they did not and have not obtained any permits or approvals at the time of issuing the notice or as of this hearing. In addition to the

aforementioned, the landlord did not provide sufficient evidence as to the scope of work, the time required and sufficient evidence as to why the tenant could not reside while the renovations were ongoing.

In the landlords own testimony he stated that the completion of these renovations would be open ended with no set date and that "if" permits became necessary, he would then seek to obtain them. The landlord has not satisfied me that the scope of work would require the unit to be vacant. Based on the above and on a balance of probabilities, I hereby set aside the notice. The notice is of no effect or force. The tenancy continues.

As the tenant has been successful in their application I find that they are entitled to the recovery of the \$50.00 filing fee. The tenant is entitled to a one time reduction of \$50.00 from the next rent due.

Conclusion

The notice is set aside, the tenancy continues.

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: November 25, 2015

Residential Tenancy Branch

