



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A cancellation of a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant amended its application and set out details of the Landlord’s application to seek a rent increase which is scheduled for a hearing in March 2016. The Tenant has not received a notice to increase the rent and has not agreed to an increase in rent.

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director, or agreed to by the tenant in writing. This section further provides that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the Act.

As the Tenant has not received a notice to increase the rent over the amount allowed by the regulations I find that the Tenant has no basis for its claim to dispute the proposed rent increase. At this point the Tenant may only respond to the Landlord’s application by appearing at the hearing and by submitting documentary evidence that disputes the

proposed increase. As a result I dismiss the claims to dispute the proposed rent increase. As there is no evidence that the Landlord has acted in a manner outside of the Act I find that the Tenant has not substantiated any entitlement to an order that the Landlord comply with the Act and I dismiss this claim.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on November 1, 1997. Rent of \$935.00 is currently payable monthly on the first day of each month.

On September 15, 2015 the Tenants received a two month notice to end tenancy for landlord's use (the "Notice"). Due to a spelling error a second corrected copy of the Notice was provided to the Tenants the next day. The reason for the Notice remained the same and sets out that "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the unit in a manner that requires the rental unit to be vacant."

The Landlord states that the unit is one of 43 apartment units. The Landlord states that no demolition will occur. The Landlord states that the bathroom will be renovated with new fixtures and the replacement of drywall, the kitchen will be renovated with new cabinets and appliances and the hardwood floors will be refinished. The Landlord states that none of the renovations require permits. The Landlord states that the bathroom will take approximately 7 days and the unit is required to be empty for this.

The Landlord states that the kitchen and bathroom will be done at separate times as they have two different contractors for this work and that the kitchen will not be useable as there will be no kitchen sink access for a period. The Landlord states that the hardwood floors will be refinished all at once to reduce costs and will take approximately

10 days for the process during which the unit cannot be occupied due to dust and not being able to walk on the floors.

The Landlord states that this unit was selected to be occupied by the Landlord's manager after the renovations. The Landlord states that there are no unoccupied units available and none coming available for the Tenants to move into and that if the Tenant's did move into another unit the rent for that unit would have to increase. The Landlord states that this reason was not included on the Notice as it was nobody's business.

The Tenant states that after being given the Notice the Landlord offered to end the dispute if the Tenant would sign a new lease agreeing to a rent increase less than what will be sought at the Landlord's hearing in March 2016. The Tenant states that this confused the Tenants and is contrary to the Landlord's evidence that the unit is required to be vacant for the renovations. The Tenant states that the kitchen floor was replaced earlier, the unit was painted in 2010, and that the Landlord installed a new bathroom sink, kitchen faucet, bathroom cabinet and tub surround. The Tenant states that the Landlord was asked if a unit was available to the Tenants on a temporary basis but did not respond. The Tenant states that they are prepared to move out of the unit on a temporary basis as long as there was no cost to the Tenants for that temporary move. The Tenant states that other tenants have not had to move while their floors, kitchens and bathrooms were renovated.

Analysis

Section 49(6) provides that a landlord may end a tenancy of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. It is undisputed that the Landlord has the intention to use the unit for its own manager. This reason is not included on the Notice. Further, the offer of a new tenancy agreement conflicts with the Landlord's act to end the tenancy and supports the Tenant's position that the unit does not require vacancy in order to make renovations.

As a result I find that the Tenants have substantiated that the Landlord does not have a good faith intention in seeking the end of the tenancy and that the Notice is therefore not valid.

The Tenants are entitled to a cancellation of the Notice. As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of the \$50.00 filing fee and the Tenants may deduct this amount from future rent.

Conclusion

The Notice is cancelled and of no effect. 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 27, 2015

Residential Tenancy Branch

