



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockston Developements Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, ERP, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; an order to have the landlord complete repairs and emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

While the tenant sought more time to submit his Application for Dispute Resolution seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property I note that the tenant received the Notice on October 29, 2015 and submitted his Application on November 3, 2015 or 5 days after he received the Notice.

The Notice itself states that tenant had 15 days to apply to dispute the Notice. As such, I find the tenant submitted his Application within the required 15 days and he does not required more time to submit his Application to do so. I therefore find this issue moot and amend the tenant's Application to exclude the matter of more time.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's claim for repairs and emergency repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 2 Month Notice.

In addition, I note that the tenant did not describe in his Application for Dispute Resolution or his evidence what repairs or emergency repairs he was requesting to be

completed. Section 59(2)(b) requires an applicant include “full particulars of the dispute that is to be the subject of the dispute resolutions proceedings.” I find the tenant has failed to provide these full particulars in relation to repairs and emergency repairs.

Based on the above, I exercise my discretion to dismiss the tenant’s claim for repairs and emergency repairs. I grant the tenant leave to re-apply for these remaining claims.

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

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, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in 2010 as a month to month tenancy with rent due on the 1st of each month. The parties disagreed on the current amount of rent: the tenant submitted rent was \$690.00; the landlords stated it was currently \$670.00.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord’s Use of Property issued on October 29, 2015 with an effective date of December 31, 2015 citing 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 be vacant.

The landlord submitted the residential property has 48 units. They also submitted that over the course of the last 7 years the landlords have been completing repairs to units as they become vacant and they have completed approximately 20 units in this timeframe.

The landlord submitted that recently they have not had a turnover in rental units and they don’t anticipate any in the immediate future, other than one of the already renovated units.

The landlords testified that this unit was set as a priority unit for a number of reasons including the condition of the flooring; the bathroom tub surround; and a major fly infestation. The landlord went on to state that the intended renovations included the replacement of flooring; kitchen cupboards; major renovations to the bathroom including flooring and tiles; and painting of the unit. The landlord anticipates the work required will take from 4 to 6 weeks and that no local government permits were required.

The tenant submitted that the landlord originally had determined his unit was in need of renovation because of a black water problem in his bathroom. He states that the

landlord came into his unit and removed the ceiling in the bathroom and determined it was a leak from the bathroom in the unit upstairs but it was no longer a health problem.

He also stated that the fly problem had been cut in half since the landlord removed the ceiling in the bathroom.

The tenant submits that he understands the need for renovation and he does not doubt the landlord's intent to do so but he notes that if he is unsuccessful in cancelling this notice a number of the other tenants are going to be very uneasy in regard to the future of their tenancy.

The tenant submitted that since he received the Notice he has been looking for a new place but he cannot find something suitable within a rental range that he can afford. The tenant is concerned that he will end up living on the street.

The landlord submitted that they would not want to see the tenant homeless and despite the fact that the effective date of the Notice has passed they would not object to a reasonable extension of the effective date if the Notice is upheld.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

As the tenant has raised no issues related to good faith or any ulterior motives I find the landlord has established that they intend to complete the repairs as described. I also find the landlord has established, based on the nature of the repairs, that the unit must be vacant to complete them.

Based on the above, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property is valid and enforceable.

In consideration of the time it took to have this matter heard by the Residential Tenancy Branch and the generous flexibility of the landlord I order the effective date of the end of this tenancy to be February 28, 2016, pursuant to Section 68(2)(a).

Conclusion

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

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: January 05, 2016

Residential Tenancy Branch

