



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL

Introduction

This hearing was convened in response to a late application by the tenant filed on February 24, 2016, for more time to make an application cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice); and if successful, to dispute the landlord's Notice dated January 08, 2016 with an effective date (automatically adjusted) of March 31, 2016.

Preliminary matters – Tenant's request for More Time to make this application.

The tenant testified they are in a wheelchair severely disabled with Multiple Sclerosis which additionally is debilitating when compounded by stress. They testified that after receiving the landlord's Notice they received considerable mixed information from the co-landlord and the realtor for the property as to the plan moving forward and the sale of the property and the new owner's plans versus the landlord's plans; and, how it could or would affect the tenancy. The tenant testified that the landlord did not fully disclose reasons for the notice until one week after receiving the Notice and that the landlord's Notice no longer made sense to them. Moreover, the tenant stated there were too many people involved with differing information and questionable honesty, causing them undue pressure, and prompting the tenant to seek additional information. I deferred my Decision on this preliminary matter, and the hearing proceeded.

Both parties attended the hearing and were given opportunity to present *relevant* evidence and testimony in respect to this dispute and to make relevant prior submissions to the hearing and fully participate in the conference call hearing. The parties agreed to the exchange of their evidence as provided to me. Despite the tenant not receiving the landlord's evidence in accordance with the Rules of Procedure, the tenant stated they were confident they could respond to the landlord's evidence.

The parties were provided opportunity to resolve or settle their dispute to no avail.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Should the Notice to End dated November 24, 2015 be set aside?

Is the landlord entitled to an Order of Possession Pursuant to Section 55(1) of the Act?

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence the Notice issued was a *valid* Notice.

Background and Evidence

I have benefit of a copy of the 2 Month Notice to End in this matter. The Notice to End was issued by the landlord for the reason afforded the landlord by **Section 49(6)(a)** and **(b)** of the Act;

Landlord's notice: landlord's use of property

49 (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act. The tenant argues the landlord in this matter does not have all the necessary permits and approvals required by law to conduct the stated purpose of the Notice and they do not intend to renovate the rental unit as the rental unit is in midst of a sale to new owners. The landlord acknowledged they will not be renovating or repairing the rental unit but seek to provide vacant possession to the purchasers as a condition for sale. However, the landlord clarified that the purchasers intend to do renovations upon possession of the rental unit.

Analysis

Residential Tenancy Policy Guideline 36 speaks to extending time periods as to the tenant's late application to dispute the Notice to End in this matter. The Policy guideline addresses authority of Arbitrators to extend or modify a time limit prescribed by the relevant Act vis a vis in *exceptional circumstances*. The Policy references criteria which would be considered by an Arbitrator in making a determination as to whether or not there were *exceptional circumstances*. I have considered the tenant's situation in respect to the differing information they may have received by the side of the landlord and the stress it may have placed on the tenant and their disability. I have also

considered that the tenant's application indicates there is merit to their claim. As a result I have allowed the tenant's late application to dispute the landlord's Notice to End.

In this type of application, the burden of proof rests with the landlord to provide evidence their Notice was validly issued, in good faith, for the stated reason, in accordance with the provisions of the Act.

On the face of the evidence in this matter, I am satisfied the landlord's motive for issuing the Notice to End was to accommodate a subject to the sale of the rental unit. The landlord testified it is not their plan to renovate or repair the rental unit; however their information is this is the plan of the purchasers. I accept the landlord in this matter did not require the rental unit to be vacant for renovations or repairs when they issued the Notice to End. As a result of all the above, I find the landlord has not provided evidence proving the Notice to End was validly issued as prescribed in the Act. Therefore, **I Order** that the Notice to End dated November 24, 2015 **is cancelled**.

As discussed with the parties in the hearing, it must be noted that in the event the rental property transfers to new owners, now as landlord they become authorized to act pursuant to **Section 49** of the Act. In addition, the current landlord may also be at liberty to issue a *new valid* Notice to End, if they can legally support it.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

This Decision is final and binding on both parties.

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: April 13, 2016

Residential Tenancy Branch