



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC ERP RP FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; particularly an order to the landlord to make repairs to the rental unit pursuant to section 33; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing. The landlord confirmed receipt of the tenant's evidentiary materials as well as her Application for Dispute Resolution package.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? Is the tenant entitled to an order that the landlord comply with the Act by completing repairs on the rental unit? Is the tenant entitled to recovery of her filing fee?

Background and Evidence

This tenancy began on February 1, 2014 as a one year fixed term. Both parties agreed that the tenancy agreement was not put in writing but was a verbal agreement with an original rental amount of \$650.00. Both parties agreed that, after a variety of issues within the rental unit, the landlord reduced the tenant's rent to \$600.00 payable on the first of each month. The landlord confirmed that he continues to hold a \$325.00 security deposit paid by the tenant at the outset of the tenancy.

The landlord issued a 2 Month Notice to End Tenancy on May 19, 2016. The tenant applied to dispute the 2 Month Notice on May 30, 2016. The landlord submitted no documentary evidence for this hearing. The landlord indicated that he has all the permits to conduct repairs and renovations to the rental unit. The landlord testified that he requires the unit to be vacant and empty as he intends to address mold within the rental unit as well as cracks in the foundation and other maintenance matters.

The tenant testified that she believes the landlord has other intentions in removing her from the rental unit. She testified that she believes the landlord could conduct his repairs without the unit being vacant. The landlord testified, to the surprise of the tenant, that he sold the residential property two weeks prior to this hearing and that the sale will be complete on July 15, 2016. He testified that the tenant may remain in the rental unit until August 1, 2016 (the effective date on the notice to end tenancy).

The tenant submitted photographic evidence showing;

- water on a bathroom floor and water damaged flooring;
- a bulging ceiling in the cold room with some openings/tears;
- water droplets on the ceiling in the cold room;
- water droplets and water damage on the stairs within the rental unit;
- other wall and ceiling water damage.

The tenant sought repairs of; the crack in the foundation; the water leaks; and mold remediation. The tenant also sought repairs of the garage door motor indicating that the garage door is her secondary fire exit within the unit.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for landlord's use when the landlord has all necessary permits and approvals required to demolish, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Within section 49 of the *Act*, the landlord is required to have good faith in his intentions to occupy the rental unit as indicated on the 2 Month Notice.

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy.

Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. A determination of credibility is a factor in making a good faith determination in certain circumstances. I find that the landlord was evasive in his answers regarding his intentions for the rental unit. Further, the landlord revealed important information regarding the rental unit that had not been disclosed to the tenant. As well, he provided minimal documentation to support his position with respect to this matter. Finally, the landlord did not dispute the tenant's claims that repairs are needed. He relied on these claims to support his position that the tenant should vacate the rental unit. To the contrary, I find that the tenant provided candid testimony that was supported by her documentation.

If the "good faith" intent of the landlord is called into question, as the tenant has done in this case, the burden is on the landlord to establish that he truly intends to do what he has indicated on the Notice to End, and that he is not acting dishonestly or with an ulterior motive as his primary motive. In all of the circumstances, I do not find that the landlord has supplied sufficient evidence to confirm his intent to demolish, renovate or repair the rental unit. In fact, the landlord testified that he intends to sell the rental unit immediately. The landlord did not provide any documentary evidence with respect to either permits issued to conduct work on the rental unit or for the sale of the residential premises. Beyond the provision of the notice to end tenancy to the tenant and his testimony at this hearing, the landlord submitted no further evidence to support his intentions with respect to the tenant's rental unit. To rely on this ground to end tenancy, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Based on the testimony of both parties at this hearing, I find that the landlord has failed to show that he does not have an ulterior motive in seeking to have the tenant vacate the residential premises.

Given my findings, I grant the tenant's application to cancel the Notice to End Tenancy. This tenancy will continue.

With respect to the tenant's application for an order for repairs, I find that the tenant is entitled to such an order with repairs to;

- garage door motor;
- crack in foundation;
- water leaks within the rental unit;
- mold remediation.

As the tenant was successful in her application, I find that the tenant is entitled to recover her filing fee.

Conclusion

I cancel the landlord's 2 Month Notice to End Tenancy.

I order that the landlord make repairs as listed above by July 30, 2016.

I issue a monetary order in favour of the tenant in the amount of \$100.00 to recover her filing fee.

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: June 30, 2016

Residential Tenancy Branch