



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

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

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

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

Issue(s) to be Decided

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed and relevant facts: The tenancy started on July 1, 2011. Rent of \$1,460.00 is payable on the first day of each month. On July 8, 2016 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord’s use. The reason indicated on the Notice is that the Landlord has all the necessary permits to renovate the unit in a manner that requires the unit to be vacant.

The Landlord states that the renovations consist of replacing all the flooring with laminate, painting the walls, replacing a bathroom sink and replacing the kitchen appliances. The Landlord states that the unit need to be empty because the renovations otherwise would be too costly. The Landlord states that she thinks the flooring would take 2 or 3 weeks to complete and that the floor may first need levelling. The Landlord does not have anything in writing from the contractor in relation to the time required. The Landlord states that the flooring cannot be completed one room at a time as there is “too much stuff”.

The Tenant states that he is a general contractor and that the flooring would only take 2 days at most to cover the approximate 600 square feet. The Tenant states that while he could accommodate the renovations by leaving the unit for a couple of weeks or moving his furnishings in between rooms, the Tenant has decided not to continue with the tenancy and will move out on or before September 30.. 2016. The Tennant confirmed that no rent was paid for September 2016. The Landlord agrees to possession of the unit on this date.

Analysis

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the agreement between the Parties that the tenancy will end on or before September 2016 I provide the Landlord with an order of possession for this date.

Had the Parties not reached this agreement I would have found the Notice to be invalid based on the Landlord's evidence of the limited scope of renovations, the most significant of which was the replacement of flooring. The Landlord had no supporting evidence in relation to the time frame to replace the flooring and the Tenant gave credible evidence that this task would only take a couple of days. For these reasons I find that the Tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on September 30, 2016.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 12, 2016

Residential Tenancy Branch