



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel the Two Month Notice to End Tenancy for Landlord's Use of the Property.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord testified that she did not receive documentary evidence from the tenant; however, in the landlords written submissions she agreed she did receive the tenant's registered mail containing her hearing documents and evidence. The second package of evidence sent by the tenant by registered mail on January 12, 2017 is also deemed to have been received by the landlord five days after it was posted pursuant to s. 90(a) of the *Act*. The tenant was permitted to provide additional evidence showing the registered mail tracking information after the hearing had concluded. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy originally started on December 12, 2014. A new tenancy agreement was entered into on October 01, 2015 for a fixed term tenancy for a year, thereafter reverting to a month to month tenancy. Rent for this unit is \$1,350.00 per month although

currently the tenant is paying \$337.50 less as ordered to do at a previous hearing held on November 24, 2016. The file number for that hearing is recorded on the front page of this decision.

The landlord testified that she served the tenant with a Two Month Notice to End Tenancy (the Notice) on December 13, 2016 by posting it to the tenant's door. The Notice has an effective date of February 28, 2017 and provided the following reason to end the tenancy:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate, or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that they need to have the house vacant to do the following work:

- Remove the old wood stove, replace the flooring, and install the new wood stove.
- Remove the drywall from ceilings in all rooms to insulate the ceiling and ensure there are no mice present.

The landlord testified that they do require permits for the wood stove insulation but have not yet obtained permits for this work. They do not require permits to take the ceilings down. Holes were cut in the ceiling by the tenant.

The tenant testified that the house does not have to be vacant to replace the wood stove. The landlord was ordered to do this work at a previous hearing by December 31, 2016 and has failed to do so. The tenant referred to her documentary evidence in the form of an email from the City stating no permits had been applied for at this address and a letter from a woodstove installer who states that the installation of a woodstove takes a day and it has never been a requirement to have vacant possession. The wood stove sits in an area which is not living space and this area could easily be taped off for work to be done.

The tenant disputed that it is necessary to take the ceilings down and disputed that she has cut any holes in the ceilings. The tenant testified that the landlord was ordered to inspect and identify entry points for rodents and to repair or block off any entry points at the last hearing and has failed to do so. The mice had chewed some small holes in the ceilings around light fixtures in the dining and living room and two holes above the fridge in a cupboard. The tenant has put

wood over these holes to prevent mice accessing the unit and put poison down to kill the mice. The tenant testified that since she put poison down she has not heard any further mice in the ceilings. The tenant testified that there is very little destruction to the ceilings as only three small points of entry.

The tenant testified that the landlord wants to get rid of the tenant because the tenant has held the landlord accountable to do repairs as a safety requirement in the home for either the tenant or any future tenants.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has testified that the work required removing and replacing the woodstove and flooring and ceilings requires vacant possession. I am not persuaded by the landlord's arguments on two counts; the first being that the work to remove and replace the woodstove requires vacant possession, as the tenant's evidence from a woodstove installer clearly contradicts this statement. I am not persuaded by the landlord's testimony for the reasons given they have to remove all the clings due to three small points of entry for the mice and for insulation. I find the landlord was previously ordered to repair or replace the woodstove by December 31, 2016 and to inspect and identify points of entry for the rodents and to repair or block these. The landlord was not ordered to take ceilings down and I do not believe this is the best economic solution to blocking rodent points of entry. Further to this the landlord agreed that she did not have the necessary permits or approvals in place to carry out work on the woodstove as required before serving the tenant with a Two Month Notice.

I am of the opinion that the landlord has not served the Notice in good faith but rather as a way to end the tenancy in retaliation to the tenant's complaints about repairs and to avoid making

costly repairs to the woodstove or other issues. Consequently, I find there is insufficient evidence to meet the burden of proof pertaining to the reason given on the Notice. As a result, the tenant's application is allowed; the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlord's use of the property dated December 13, 2016 is cancelled and the tenancy will continue.

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 30, 2017

Residential Tenancy Branch