



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNSD, ERP, OLC, FF, RP

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 of Property (the 2 Month Notice) pursuant to section 49;
- authorization to obtain a return of all or a portion of her security and pet deposits pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issues

At the outset of the hearing the tenant advised that she mistakenly applied for the return of the pet and security deposit, accordingly; she withdrew that portion of the application. In addition, the landlord advised that the repairs and emergency repairs and order for him to comply with the *Act*, regulation or tenancy agreement applied for by the tenant are subject of an insurance claim and will be dealt with regardless of the outcome of this hearing, the tenant advised that she was satisfied. As that issue is in the midst of being addressed, I hereby dismiss that portion of the tenants' application with leave to reapply if in the unlikely event those issues are not dealt with. The remaining issues to be addressed were the notice to end tenancy and the filing fee. The hearing proceeded and completed on that basis.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on or about February 1, 2014. Rent in the amount of \$900.00 is payable in advance on the first day of each month. The landlord testified that on March 31, 2017 he served the tenant a 2 Month Notice to End Tenancy for Landlords Use of Property by way of e-mail on the basis that:

- *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 to be vacant...*

The landlord testified that new flooring will be required throughout the unit, the kitchen will be completely renovated and that the bathroom will have new flooring and possibly more, depending on what the contractor finds once the flooring is pulled out. The landlord testified that he has concerns for the tenant as she is pregnant and has young children. The landlord testified that he will be applying for a permit to have all of the electrical done in the home as he hopes to sell the property. The landlord testified that due to a septic tank back up, an insurance claim was made and that remediation work would need to be first conducted and then the renovation. The landlord testified that the timeline for the renovation and remediation will take approximately 12 weeks. The landlord testified that it would be easier, safer and more convenient to all if the unit was vacant and requests an order of possession.

The tenant gave the following testimony. The tenant testified that she disagrees with the timeline of remediation and renovations as proposed by the landlord. The tenant testified that she is fully aware that she and her family could be without a bathroom or kitchen for extended periods but is willing to "live with it" and make arrangements so that the landlord can conduct repairs. The tenant testified that she will work with the landlord and his contractors and will not impede or restrict access to the unit for any and all required work. The tenant testified that she contacted renovation companies and was told a much shorter timeline would be needed to conduct the proposed work. The tenant requests that the tenancy continues and that she will work with the landlord.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the

respective submissions and / or arguments are reproduced here. The principal aspects of the tenant claim and my findings around each are set out below.

When a landlord issues a notice to end tenancy the landlord bears the burden of providing sufficient evidence to support the issuance of the notice. At the time of issuing the notice, the landlord did not have any permits in his possession and still doesn't. I have reviewed and considered the landlords submissions as to the scope of work and the length of time required. Although the landlord would prefer to have the unit vacant to undertake this work, I am not satirised that he has not provided sufficient evidence to show the absolute necessity for it to be empty based on the documentation submitted for this hearing and the landlords own testimony. As a result, I find that on a balance of probabilities, he has not been successful in his application. The notice to end tenancy is set aside; the notice is of no effect or force.

As the tenant has been only partially successful in her application, she must bear the cost of the filing fee.

Conclusion

The 2 Month Notice to End Tenancy for Landlords Use of Property dated March 31, 2017 is cancelled, it is of no effect or force. The tenancy continues.

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: May 15, 2017

Residential Tenancy Branch