



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy, for an order cancelling a notice to end the tenancy for landlord's use of property, and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The landlord also called one witness who gave affirmed testimony, and the parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began sometime before the landlord purchased the rental unit, and the tenants still reside in the rental unit. Rent in the amount of \$975.00 per month is payable on the 1st day of each month, and there are no rental arrears. The tenants paid the previous landlord a security deposit, which was transferred to the current landlord in the amount of \$487.00 and is still held in trust by the landlord. The rental unit is one of 3 apartments owned by the landlord.

The landlord further testified that on February 1, 2017 he personally served one of the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of

which has been provided for this hearing. The landlord testified that it is dated incorrectly showing that it was dated March 31, 2017, and it contains an effective date of vacancy of March 31, 2017. The reason for issuing it states: "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 his company owns all 3 of the rental units and is renovating. The other 2 have vacated and renovations are currently on-going. The building is old, and in this rental unit, the landlord intends to change carpeting to laminate, remove all of the cabinetry, tear down the kitchen and put in new appliances. Also, doors have to be removed and the entire rental unit will be painted, including ceilings. Hall carpeting and doors will all be replaced. There are too many things that keep breaking down so the landlord wants to replace it all, and during renovations the rental unit will not be livable. No work on plumbing, electrical or the building envelope will be done, so no permits are necessary, but it is major construction requiring contractors to wear steel-toed boots and not safe for the tenants. Contractors will not do the work if the rental unit is not vacant due to safety reasons.

The landlord has offered to assist the tenants find a new place to rent and offered another rental unit which is managed by the landlord, but the tenants refused it because the rental amount is too high. The landlord also fears that if renovations are not completed, the tenants might sue the landlord.

The landlord also submits that if the tenants are not successful with the application, the landlord would be content with an Order of Possession effective the end of May, 2017.

The landlord's witness testified that he works for the contractor that is doing the work for the landlord on the rental units. The rental unit needs to be vacant so that all kitchen cabinets and other renovations can commence, hopefully at the end of this month or early next month. No permits to do the intended work are required.

The tenant testified he received the Two Month Notice to End Tenancy for Landlord's Use of Property on February 1, 2017. However, the tenant believes that the renovation work intended by the landlord is cosmetic and doesn't require the tenants to move out. The tenants could leave for the day and return later, and keep doing that until the project is complete. Furniture can be moved from room-to-room or to the balcony as required.

With respect to the request for more time than prescribed to dispute the notice to end the tenancy, the tenant testified that he attended a meeting held by a Member of Parliament and obtained a booklet which suggested that tenants given such a notice may contact City Hall to determine whether or not permits had been taken out by the landlord. The tenant

did so, but after the time to dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property had expired, and discovered that no permits had been issued.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. And where the notice is a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that he/she intends in good faith to do with the rental unit whatever is contained in that notice as the reason for issuing it.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. I accept that there is an error in the date of issuance, and the parties agree that it was served on February 1, 2017. Because rent is payable on the 1st day of each month, the effective date of vacancy is changed to April 30, 2017.

The law permits a landlord to end a month-to-month tenancy for certain reasons, one of which is that the landlord intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant, and if permits or approvals are required by law, the landlord has obtained those permits or approvals before issuing the notice to end the tenancy. In this case, the landlord and the landlord's witness both testified that no permits are necessary, and I accept that. I also accept that work has already commenced on the other 2 units owned by the landlord's company. The landlord also testified that the extent of the renovations will render the rental unit unlivable, and I accept that testimony.

The tenant also testified that he learned after the expiry date of the time limit to dispute the notice to end the tenancy that he should contact City Hall, which is why the tenants were late disputing it. The parties agree that the notice was served on February 1, 2017, and the tenants filed the application for dispute resolution on April 21, 2017 which is more than 2 months after the expiry date of the time to dispute. The second page of the notice clearly states that the tenants may dispute it but must do so within 15 days. I am not satisfied that the extra time should be granted to the tenants.

I hereby dismiss the tenants' application in its entirety.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found

that it is in the approved form, I hereby grant an Order of Possession in favour of the landlord. The landlord submitted that he would be content with an Order of Possession effective May 31, 2017, and I hereby grant the Order of Possession effective at 1:00 p.m. on May 31, 2017.

Since the tenants have not been successful with the application the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on May 31, 2017.

This order is final and binding and may be enforced.

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 23, 2017

Residential Tenancy Branch