



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, AS, O, FF

Introduction

This hearing was reconvened following an adjournment from the original hearing. The hearing considers the Tenant's application and amended 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.

Preliminary Matter

The Tenant states that the Landlord's evidence package provided to the RTB is different than the evidence package given to the Tenant. The Tenant requests that the evidence package be disallowed. The Tenant confirms that it has the two page letter setting out the expected renovations and the submission that the Landlord intends to occupy the unit after the renovations. A review of the remaining documents in the Landlord's package shows that the other documents are not relevant to the issue at hand. I therefore will decline to consider those evidence items. As the Tenant has the relevant documents of renovations and the Landlord's submission I decline to disallow those evidence items.

Issue(s) to be Decided

Is the reason for the notice to end tenancy valid?

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

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The original tenancy of a portion of a house started on November 1, 2014 with rent of \$1,600.00 payable on the first day of each month. A subsequent tenancy agreement was entered into for the whole house that includes a basement suite. This tenancy stated on June 10, 2015 with rent of \$2,550.00. At the outset of the first tenancy the Landlord collected \$800.00 as a security deposit and this was carried over to the second tenancy. On March 27, 2017 the Landlord posted a two month notice to end tenancy for landlord's use (the "Notice") on the Tenant's door. The reason indicated for the Notice is that renovations will take place that require the unit to be vacant.

The Landlord's Agent submits a letter from the general contractor dated March 10, 2017 that sets out renovations to be completed over a period of 8 weeks. The Agent states that states that the renovations are being done in order for the Landlord, an elderly woman with expected hip surgery, to move into the unit. The Agent states that the Landlord is currently on a wait list and does not know when the surgery will occur but that there is no intention to rent out the renovated unit if the surgery wait is longer than the expected time for renovation completion. The Landlord states that the unit would remain empty until the Landlord moves in.

The Landlord agrees that the renovations to the doors, windows, and fireplace can be done without the unit being empty. The Landlord does not know how long the renovations would take to the kitchen and bathroom as the Landlord expects that all the renovations would occur at the same time or as subcontractors are available. The Landlord thinks that the kitchen renovations could take a week in itself and that the

bathroom would take longer than a day. It is noted that the other repairs are to prepare and paint the walls and to repair damaged hardwood planks. The Tenant states that he is prepared to accommodate the renovations for as long as 4 weeks by staying elsewhere for the renovations to the kitchen and bathroom.

Analysis

Section 49(6) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The key issue is whether the Landlord has a different reason for ending the tenancy than that stated on the Notice and whether the renovations require the unit to be vacant in order to complete the renovations. There is no evidence that the renovations to the kitchen and bathroom could not be done within 4 weeks. Given the descriptions of the renovations to the rest of the unit I find that the remaining renovations to replace the doors and windows, to repair portions of the hardwood flooring, to paint the unit and to repair and paint the fireplace to be minor and could be done while the Tenant occupies the unit. I consider that the Tenant can accommodate the renovations to the kitchen and bathroom. I also consider that the primary intention of the Landlord is not to renovate the unit but to occupy the unit. For these reasons I find that the Landlord has not substantiated that the reason stated on the Notice is the ultimate reason to end the tenancy or that the renovations require a vacant unit. I find that the Tenant is therefore entitled to a cancellation of the Notice. The Landlord remains at liberty to serve the tenant with another Notice that provides the ultimate reason for ending the tenancy.

As the Tenant has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the entitlement.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues.

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 Act.

Dated: June 20, 2017

Residential Tenancy Branch