



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

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 ("2 Month Notice"), pursuant to section 49, an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

BL ('landlord') testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice, dated August 21, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

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?

Background and Evidence

This month-to-month tenancy began on April 30, 1992. Monthly rent is set at \$1,400.00, payable on the first day of each month. The landlord collected, and still holds, a security deposit of \$425.00. The tenant continues to reside in the rental home.

The landlord issued the 2 Month Notice on August 21, 2017 for the following reason:

- 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 provided the following background for why they had decided to issue the 2 Month Notice. The landlord's agent testified that the landlord intended to demolish the single dwelling home to convert the rental to personal use. The landlord included in their property tax assessment that showed a substantial increase in the assessment value due to the reclassification from farm property to residential property. The property taxes increased from \$756.26 in July of 2015 to \$6,959.00 for July 2016.

The landlord testified that he had obtained the services of a contractor, JL, who testified in the hearing confirming that he had assisted the landlord in obtaining the necessary permits. The landlord included in their evidence the permits they obtained, and invoices dated October 24, 2017.

The tenant testified that the landlord was not in possession of all the necessary permits for this renovation at the time that the 2 Month Notice was issued to him on August 21, 2017. The tenant testified that the landlord obtained these permits after he filed his application to dispute the notice on September 1, 2017, and therefore the 2 Month Notice was not issued in accordance with the *Act*.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, 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 tenant gave undisputed sworn testimony that the landlord had not obtained all the necessary permits for the renovations at the time the 2 Month Notice was issued to him. Although the landlord had obtained permits through his contractor, the permits were obtained on October 24, 2017 after the tenant had filed to dispute the 2 Month Notice issued to him on August 21, 2017. The reason provided on the 2 Month Notice states clearly that the landlord must have any required permits already in place. On this basis, I find that the landlord had issued the 2 Month Notice dated August 21, 2017 prior to obtaining these permits.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice dated August 21, 2017. The landlord's 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find the tenant is entitled to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated August 21, 2017 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 1, 2017

Residential Tenancy Branch