



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAV LAL HOLDINGS LTD,
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for additional time to do so and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Did the tenant have extraordinary circumstances that prevented him for making application to dispute the notice to end tenancy in a timely manner? Has the landlord validly issued the notice to end tenancy and does the landlord have the necessary permits required by law?

Background and Evidence

The tenancy started on June 01, 2012. A tenancy agreement was filed into evidence. The monthly rent is \$821.00 payable on the first of each month.

On December 08, 2017 the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The effective date of the notice is February 28, 2018. The reason the landlord gave the notice to the tenant is described as, the landlord has all necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires the unit to be vacant.

During the hearing, the landlord testified that he found out from the local municipality that for the scope of the work to be done, permits were not required. The landlord agreed that he did not have any permits for the repair work he intended to carry out.

The landlord filed a list of items to be renovated in the rental unit along with photographs of the unit. The landlord testified that the building is almost 50 years old and most of the items inside the unit are the original fixtures. The landlord provided an example of the wash basin in the bathroom being the original pink coloured fixture that was installed almost 50 years ago. The landlord also described other areas of the rental unit that needed updating and renovation.

The tenant stated that on or about December 15, 2017, which is shortly before he received the notice to end tenancy, he was diagnosed with prostate cancer. He testified that due to this development, his mental state of mind was affected and he failed to make an application to dispute the notice to end tenancy, in a timely manner. The tenant has applied for additional time to file this application.

Analysis

Based on the sworn testimony of both parties, I find that the landlord served the tenant with a notice to end tenancy for landlord's use of property on December 19, 2017, by posting the notice on the door. Pursuant to section 90(c) of the *Residential Tenancy Act*, the tenant is deemed to have received this notice on December 22, 2017.

Section 49(8) of the *Act* provides that tenants have 15 days in which to dispute a two month notice to end tenancy, failing which they are conclusively presumed to have accepted the end of the tenancy. The tenant had up to January 06, 2018 to make application but did so on January 09, 2018 which is 3 days after the legislated time frame expired.

Section 66(1) of the *Act* provides:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3).

In this matter, the word *exceptional* implies that the reasons for failing to apply for a dispute resolution in the time required are very strong and compelling.

On reflection of the tenant's testimony, I find that the tenant had *exceptional circumstances* that prevented him from filing for dispute resolution within the legislated time limit and accordingly I grant him the extra time.

The landlord filed a list of items to be renovated in the rental unit along with photographs of the unit. The list was drawn up by the landlord himself and lists items like tile, flooring, bathrooms, baseboard, appliances, electrical, windows, blinds etc. The landlord did not provide any details of the scope of the work to be done and also did not indicate that he is a structural engineer, a plumber or a building contractor specializing in renovations.

While I accept that the intended renovations are extensive, most appear to be cosmetic and the landlord did not provide sufficient evidence to indicate that the unit was required to be vacant while this work was ongoing.

The *Act* requires permits and approvals required by law, to be obtained prior to the landlord issuing the notice to end tenancy for landlord's use of property. In this case the landlord agreed that he had not obtained any permits prior to issuing the notice to end tenancy for landlord's use of property. The landlord stated that the local municipality did not require him to obtain permits for the work he intended to carry out in the rental unit.

Usually any in depth structural work, including removing walls, and any electrical work, including moving any electrical outlets, plumbing work etc. requires local municipality approval and permits. The landlord testified that he did not obtain any permits for rental unit renovations because permits were not required. However, at the time of issuing the 2 Month Notice, it states clearly on the notice that the landlord must have any required permits already in place. The landlord indicated that no work requiring permits would be done in the tenant's rental unit, which calls into question the extent of the intended renovations to be completed.

The landlord stated that this work would take about 45 days. I asked the landlord if he could provide alternate accommodation for the tenant while the work was ongoing. The landlord stated that he had a unit that will be available at the end of March 2018 and was willing to relocate the tenant.

However the landlord added that if the tenant wanted to return to the rental unit, he would have to make application and go through the process that the landlord has in place, to qualify applicants who apply to rent the unit. In addition the landlord indicated that the rent would be higher. The tenant has just received a rent increase in September 2017.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his onus of proof to show that the landlord, in good faith, intend to renovate the rental unit in a manner that requires the rental unit to be vacant

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated December 08, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in his application, he is entitled to recover the 100.00 filing fee from the landlord. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. I grant the tenant a monetary order in the amount of \$100.00.

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: March 02, 2018

Residential Tenancy Branch