



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBRIDGE DEVELOPMENT (BAYCREST LTD)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FFT, LRE, OLC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to cancel a Notice to End Tenancy for Landlord's Use of Property, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order setting conditions on the Landlord's right to enter the rental unit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenants stated that on February 01, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On February 01, 2018 the Tenants submitted 26 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenants stated that this evidence was served to the Landlord, via registered mail, on February 19, 2018. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 05, 2018 the Landlord submitted 60 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on March 01, 2017. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but it is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided:

Should the Notice to End Tenancy for Landlord's Use of Property be set aside?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Is there a need to issue an Order setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence:

The female Tenant stated that the Tenants moved into the rental unit in September of 1999.

The Agent for the Landlord stated that the rental unit was purchased by the Landlord in 2015 or 2016.

The Landlord and the Tenants agree that the parties entered into a written tenancy agreement on August 01, 2016.

The Agent for the Landlord stated that on January 31, 2018 the Landlord left a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 31, 2018, in the Tenants' mail box. The Agent for the Tenants stated that this Notice to End Tenancy was located by the Tenants on February 01, 2018.

The Landlord and the Tenants agree that the Notice to End Tenancy declared that the rental unit must be vacated by March 31, 2018. The parties agree that the Notice to End Tenancy declares that the tenancy is ending because 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 and the Tenants agree that Landlord must obtain a watercourse development permit before the Landlord can obtain a demolition permit for the rental unit.

The Agent for the Landlord stated that a third reading of the re-zoning bylaw occurred on March 12, 2018 and that he anticipates the watercourse development permit will be issued "early next week".

The Agent for the Tenants agreed that the third reading of the re-zoning bylaw occurred on March 12, 2018. She stated that the watercourse development permit may be issued, but submits that it has not yet been issued.

The Agent for the Landlord stated that the Landlord must also obtain a certificate that certifies all hazardous materials have been removed from the rental unit before the Landlord can obtain a demolition permit for the rental unit.

The Landlord and the Tenants agree that the rental unit was tested for hazardous materials on February 01, 2018 or February 02, 2018.

The Landlord submitted a report from an environmental consulting company. The Agent for the Landlord stated that this report was completed by the company that inspected the rental unit on February 01, 2018 or February 02, 2018.

The Agent for the Tenants questions the validity of this report, in part, because the first page of the report indicates it was prepared in February of 2017. After seeing the date of February 07, 2018 on the second page of this report, the Agent for the Tenants acknowledged that the 2017 date may have been an administrative error.

The Agent for the Tenants questions the validity of this report, in part, because the report mentions a crawl space on page 3 of the report, and there is no crawl space in this rental unit. The portion of the report the Agent for the Tenants is referring to reads:

"Asbestos-containing paper tape was not observed though this material may also be present at floor exhaust registers/diffusers; behind walls; within crawl space; and, and above false ceiling throughout the building".

The Landlord and the Tenants agree that the report from the environmental consulting company indicates that there are hazardous materials in the rental unit and that the materials should not be removed while the rental unit is occupied.

The Agent for the Landlord argued that the demolition permit will not be granted until all the hazardous materials have been removed from the rental unit and that all hazardous materials cannot be removed from the rental unit until the Landlord has vacant possession of the unit.

The Agent for the Tenants stated that the application for an Order requiring the Landlord to comply with the *Act* is a request for an Order that prevents the Landlord from serving the Tenants with another Two Month Notice to End Tenancy for Landlord's Use of Property until the Landlord has all the permits and approvals required by law to demolish the rental unit.

In support of the application for an Order setting conditions on the Landlord's right to enter the rental unit the Agent for the Tenants stated that there have been several emails regarding the Landlord's intent to enter the rental unit and that the Landlord, or people acting on the Landlord's behalf, have entered the rental unit on two occasions in the last six months.

The Agent for the Landlord stated that now that the rental unit has been inspected for hazardous materials he does not anticipate the Landlord will need to inspect the rental unit in the near future.

Analysis:

On the basis of the undisputed evidence I find that the Landlord served the Tenants with a Two Month Notice to End Tenancy and that the Landlord is attempting to end the tenancy in accordance with section 49(6)(a) of the *Act*.

Section 49(6)(a) of the *Act* authorizes a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit. (Emphasis added)

On the basis of the undisputed evidence I find that a watercourse development permit must be issued before the Landlord can be issued a demolition permit for this rental unit.

On the basis of the undisputed evidence I find that a watercourse development permit has not yet been issued for this rental unit.

As the water course development permit has not yet been issued and that permit must be issued before a demolition permit can be issued, I find that the Landlord does not have all of the necessary permits and approvals required by law to demolish the rental unit.

As the Landlord does not have all of the necessary permits and approvals required by

law to demolish the rental unit, I find that the Landlord does not yet have the right to end the tenancy pursuant to section 49(6)(a) of the *Act*. I therefore grant the Tenants' application to set aside the Two Month Notice to End Tenancy for Landlord's Use of Property.

On the basis of the report from an environmental consulting company that was submitted in evidence I find that there are hazardous materials in the rental unit that will need to be removed prior to the rental unit being demolished and that the hazardous materials should not be removed while the rental unit is occupied.

In the absence of evidence to show that this report was not completed by a qualified professional, I accept that the report accurately represents the current condition of the rental unit. I find that the Tenant's submission regarding the validity of the report does not cast any significant doubt on the veracity of the report.

I find that the February of 2017 date that appears on the first page of the report is most likely an administrative error, as a date of February 07, 2018 appears on the second page of the report.

I find that the mention of a crawl space that appears on page 3 of the report is likely standard wording used to declare that asbestos-containing paper tape may be presence in areas of the house that were not inspected. I do not believe this sentence was intended to declare that there is a crawl space in this rental unit.

On the basis of the undisputed evidence I accept that the Landlord cannot obtain a demolition permit until all the hazardous materials have been removed from the rental unit and that the hazardous materials cannot be removed from the rental unit until the Landlord has vacant possession of the unit.

In circumstances where the only thing preventing a landlord from obtaining a demolition permit is the need to remove hazardous materials and vacant possession of the rental unit is required for that purpose, I find that a Residential Tenancy Branch Arbitrator may uphold a notice to end tenancy that is served pursuant to section 49(6)(a) of the *Act*. This is not a decision that needs to be made at these proceedings, however, as removing hazardous materials is not the only thing preventing the Landlord from obtaining a demolition permit for the unit.

To provide some stability to the Tenants and clarity to the Landlord, I hereby Order the Landlord not to serve another Two Month Notice to End Tenancy for Landlord's Use of

Property to the Tenants, pursuant to section 49(6)(a) of the *Act*, until the Landlord has all the permits and approvals needed to obtain a demolition permit for the rental unit, with the exception of the certificate that shows all hazardous materials have been removed from the rental unit.

On the basis of the Agent for the Tenants' testimony that Landlord, or people acting on the Landlord's behalf, have only entered the rental unit on two occasions in the last six months, I find that there is no need to issue an Order setting conditions on the Landlord's right to enter the rental unit. The Landlord retains the right to enter the rental unit in accordance with section 30 of the *Act*.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Two Month Notice to End Tenancy for Landlord's Use is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

I authorize the Tenants to reduce one monthly rent payment by \$100.00 as compensation for the cost of filing this Application for Dispute Resolution.

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 14, 2018

Residential Tenancy Branch