



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing was convened in response to an application by the tenant filed on January 31, 2018, to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated January 31, 2018 with an effective date of March 31, 2018. The tenant also seeks to recover the filing fee for this matter.

Both parties attended the hearing. The parties were given opportunity to mutually resolve their dispute to no avail. Both parties were given opportunity to present all *relevant* evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing, present witnesses and fully participate in the conference call hearing. The parties acknowledged exchanging evidence and each receiving the evidence also received by this proceeding. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Neither party provided a copy of the Notice to End. However, the tenant was asked to confirm the contents and all specific particulars of the 2 Month Notice to End in question with which the landlord agreed. I am satisfied that the landlord issued a Notice to End pursuant to Section 49(b) of the Act and which Notice complies with Section 52 of the Act.

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice, issued in good faith, and for the stated reason(s) pursuant to the Act.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Should the Notice to End dated January 31, 2018 be set aside?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties testified in respect to the 2 Month Notice to End issued pursuant to the Act, served the tenant for the reason afforded the landlord by Section 49(6)(b) of the Act;

Landlord's notice: landlord's use of property

49 (6) 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 do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act.

The landlord testified of the reasons and of their intention to renovate and repair the rental unit. In support of the Notice to End the landlord submitted a copy of their application to the City for a multi-faceted permit to do the work dated less than 2 weeks before this hearing. The landlord confirmed the recent application and that no permits have been issued or approved to date. The landlord provided details of the required work to address the landlord's scope of the intended renovations and repairs, which the landlord categorized as upgrading aspects of the building structure and aspects of the rental unit. The landlord testified that the scope of the work will require varying number of months to complete and cannot be done or completed while the rental unit is occupied. The tenant did not dispute the validity of the proposed work nor are they questioning the landlord's good faith intention to perform the work.

Analysis

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason, in accordance with the provisions of the Act.

On the face of the evidence in this matter, I am satisfied by the evidence that the rental unit requires work as is portrayed by the landlord and their permit application. I am further satisfied the landlord will be required to secure certain permissions (permits) required by local government law or regulation but to date the evidence is that they have not obtained same, having applied less than 2 weeks ago. But moreover, I find that the evidence is that the landlord does not have the necessary permits as prescribed

by Section 49(6) of the Act. I find that Section 49(6) operates to ensure that required permits are 'in hand' before a tenancy is notified of its likely end. As Section 49(6) is clear that any necessary permits are a precondition to issuing the Notice to End I find the landlord has not provided sufficient evidence proving the Notice to End was validly issued in accordance with the Act or is currently valid. Therefore, **I Order** that the Notice to End dated January 31, 2018 **cancelled**.

I make no finding in respect to whether the claimed work requires the rental unit to be vacant.

If the landlord secures the required permits to conduct the stated work and have proof supporting the stated work requires the rental unit to be vacant, the landlord remains at liberty to issue another *valid* Notice to End. As the tenant has been successful in their application they are entitled to recover the filing fee.

Conclusion

The tenant's application is granted. The landlord's Notice to End dated in January 2018, or in any event the most recent Notice to End, is **set aside and is of no effect**. The tenancy continues.

I Order that the tenant may deduct **\$100.00** from a future rent in satisfaction of their filing fee.

This Decision is final and binding.

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: April 04, 2018

Residential Tenancy Branch