



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

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.

The landlord's agent, DG ('landlord'), appeared and spoke on behalf of the landlord, 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 ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenant testified that he was personally served with the 2 Month Notice on February 21, 2018. As the tenant confirmed receipt of the 2 Month Notice, dated February 19, 2018, 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?

Background and Evidence

The tenant testified that this month-to-month tenancy began in August of 2015. Monthly rent is currently set at \$1,709.00, payable on the first day of each month. The landlord collected, and still holds, a security deposit. Both parties could not confirm the exact amount of the deposit, which was approximately \$800.00. The tenant continues to reside in the rental unit.

The landlord issued the 2 Month Notice, with an effective move-out date of May 1, 2018, 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's agent provided the following background for why they had decided to issue the 2 Month Notice. The landlord's agent testified that this 32 unit complex was approximately 45 years old, and was in need of renovations for the purpose of maintaining the building. The landlord had already started to undertake renovations, and 10 units have been renovated. The landlord's agent testified that he was the contractor, and in the landlord's evidence, the landlord submitted a scope of work prepared by the contractor as well as the permit obtained by the landlord. The landlord acknowledged that the permit does not indicate the issue date or expiry date, and the spaces were blank where the dates should have been. The landlord's agent testified that the permit was obtained on February 20, 2018.

The landlord submitted in evidence pictures of the renovations that have been completed in other units. The landlord's plan was to slowly renovate 2 to 3 units per year as they become available, and the renovations included new bathrooms and windows. The landlord testified that the renovations required the units to be vacant as the renovations were extensive. The landlord testified that there are currently no vacancies, but the tenant was offered a renovated unit for monthly rent of \$2,550.00, which the tenant declined as it was much higher than his current monthly rent.

The tenant testified that his unit was recently renovated, which included new flooring, carpets, and cabinets. The landlord confirmed that the tenant's unit was renovated approximately 6 years ago, before this tenancy began. The unit was repainted, and was updated with a new washer and dryer. The bathroom was also renovated approximately 6 years ago. The tenant questioned the good faith of the landlord in issuing the 2 Month Notice as the condition of his unit was "really good". The tenant testified that his unit did not require renovations, with the exception of new windows, and he did not believe that renovations required for his unit justified the ending of this tenancy.

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.

As the good faith intention of the landlords was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that there was no specific reason provided by the landlord to support why this particular unit was selected for renovations when undisputed evidence was provided that other units have yet to be renovated. The landlord's agent also did not dispute the tenant's testimony that updates have been done in this particular unit. Furthermore, the landlord's permit, although perhaps valid, does not indicate the date of issuance or expiry. In the absence of these dates or sufficient supporting information, I have no way of verifying that the landlord was in possession of this permit at the time the 2 Month Notice was served to the tenant.

Although the landlord stated that they had issued the 2 Month Notice in order to renovate the suite, I find that the tenant had raised doubt as to whether this particular unit required the renovations the landlord testified to, and whether the landlord was in possession of this permit when the 2 Month Notice was issued to him. As the tenant raised doubt as to the landlord's good faith, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith, and that the landlord had all the necessary permits and approvals required by law to renovate the rental unit in a manner that requires the unit to be vacant. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate his rental unit for the specific purpose of renovations. I am also not satisfied that the landlord has met the onus of proof that the landlord was in possession of the necessary permit at the time the 2 Month Notice was issued to the tenant.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated February 19, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated February 19, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: May 28, 2018

Residential Tenancy Branch