



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND TELFORD LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("two month notice") pursuant to section 49 of the *Act*;
- More time to cancel the landlord's Notice to End Tenancy pursuant to section 66 of the *Act*.

The tenant and his witness, D.D. attended the hearing, while the landlord was represented by agent A.Z. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The parties confirmed receipt of each other's evidentiary package and the tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy. I find that all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 2 Month Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Testimony was provided by both parties that the landlord served the tenant with a 2 Month Notice to End Tenancy after having placed it under the door of the rental unit on approximately February 19, 2018. No copy of the 2 Month Notice was provided to the hearing, however, the tenant confirmed that the reason cited on the 2 Month Notice was as follows:

- *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.*

Undisputed testimony provided by both parties that this tenancy began on June 1, 2017. Current rent is \$1,060.00 per month, and a security deposit of \$315.00 continues to be held by the landlord. \$215.00 of the security deposit was returned to tenant N.L. upon her move out, while tenant H.A. continues to occupy the rental unit.

The landlord explained that the rental unit in question was contained in an older rental building which required a significant number of repairs. Specifically, the landlord said that there was a chance that asbestos was present in the building and that he wished to have this remediated. He continued by saying a leaking roof also required replacement and that the nature of the work did not call for permits from the city to be issued. The landlord continued by saying that some electrical work and other renovations were needed to bring the building to an acceptable working standard. The landlord said that no contractors were yet secured and that no tests had been done on the building to determine if asbestos was present.

The tenant disputed the notice to end tenancy, arguing that the landlord was attempting to “renovict” him. He said that the landlord owned three adjacent building and that the building was located in an area which was currently undergoing heavy redevelopment, with numerous large apartment towers replacing older buildings like the one he currently occupied. The tenant questioned the good faith element of the landlord’s 2 Month Notice arguing that very little information had been provided to him about any potential renovations which were to take place inside the rental building.

Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where 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. During the hearing the tenant questioned the good faith requirement of the 2 month notice, arguing that he felt the landlord was trying to “renovict” him from the building.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

A claim of good faith requires honesty of intention with no ulterior motive...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering all of the oral testimony presented, and after having carefully reviewed all of the evidence submitted, I find that the tenant has successfully disputed the landlord’s 2 Month Notice. I find insufficient evidence was presented to the hearing showing that adequate steps had been taken to prepare the property for renovations.

I accept the landlord's testimony no permits are required for the nature of the renovations that he plans to undertake; however, little evidence other than oral testimony was presented to the hearing that any concrete steps had been taken to advance the building for roof repairs or asbestos remediation. The landlord failed to provide letters from contractors describing the nature of the project, or containing quotes on costs. No photos of the work required in the building or plans for the proposed renovations were submitted and little detail was presented regarding the timelines associated with the required work. I find that the landlord has failed to show on a balance of probabilities, that is more likely than not, that he plans to renovate the rental unit in the manner described at the hearing. For these reasons the landlord's application is dismissed.

Conclusion

The tenant was successful in his application to cancel the landlord's 2 Month Notice. This tenancy shall continue 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: June 18, 2018

Residential Tenancy Branch