



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

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 of the *Act*; and
- Return of the filing fee pursuant to section 72 of the *Act*.

The tenant and the landlord attended the hearing. Both were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution while the tenant confirmed receipt of the landlord's evidentiary package. No evidence was submitted to the hearing by the tenant. Both parties are found to have been served with these documents in accordance with the *Act*.

Issue(s) to be Decided

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

Can the tenant recover the filing fee?

Background and Evidence

Testimony provided to the hearing from the tenant explained that this tenancy began on July 1, 2017. Rent is \$800.00 and a security deposit of \$400.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord said that a 2 Month Notice to End Tenancy was served on the tenant on April 26, 2018. The reason cited on this notices was listed 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.

The tenant questioned the necessity of such repairs and argued that the landlord had failed to provide him with any details related to repairs that are required in the rental unit. In addition, the tenant said he had not been shown any permits or other information related to the proposed renovation works.

The landlord acknowledged that his renovation plans for the rental unit remained in flux but stated that the reason for this was because he had never performed a walk-through inspection of the rental unit, following his purchase of the rental home and therefore did not have a detailed inventory of the items which required repair. The landlord said that during the course of the tenancy, he was forced to replace the furnace and water tank. During these repair works, several issues were identified to him by the contractors who were installing the furnace and water tank. Specifically, a false ceiling was discovered which contained numerous dead mice. The landlord said that the concentration of dead mice was so great that a large amount of insulation had to be removed and discarded. The landlord explained that further evidence of repair works required in the rental unit was discovered during the Christmas season when a breaker had an issue that required his attention. The landlord said that more dead mice, along with a large number of problems related to the wiring were once again discovered in the false ceiling.

The landlord said that he had also concerns related to issues of flooding in the rental unit. The landlord described a large flooding issue that had occurred in the home prior to his purchase of the home in 2017. The landlord continued by explaining that this issue had recently resurfaced and required the installation of a sump pump to prevent future flooding issues.

As part of his evidentiary package, the landlord supplied several pages from an inspector's report that detailed the issues which had been identified to him. The landlord said that he did not know how long these repairs would take, nor could he identify

exactly what was needed because he argued he had not had an opportunity to do a full viewing and inspection of the rental unit. The landlord said that he wanted to ensure the rental suite was safe, and that many of the items identified to him by the inspector were deemed urgent. Finally, the landlord said that because of the unknown work to be performed, he could not say whether permits were required to perform the work.

Analysis

When a tenant disputes a landlord's 2 Month Notice to End Tenancy, the burden of proof is placed on the landlord to demonstrate why a Notice to End Tenancy should be found to be valid. In this case, the landlord must show why he requires the rental unit vacant before he can complete repair works that are allegedly necessary.

Residential Tenancy Policy Guideline #2 examines in great detail, the issues surrounding ending a tenancy for landlord's use of property. Section 2-5 at Part B discusses what must be examined when a Notice to End Tenancy has been issued to a tenant under section 49(6) of the *Act* where a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. It states, "it is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals."

In this case, the landlord argued that no permits were required, or may not be required, however, he could not accurately say as he did not have a concrete idea of the of the scope of work that would be necessary.

Policy Guideline #2 has contemplated this scenario and notes, "If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government. Local governments may have information about when permits or approvals are required on their website...landlords should check with the permit department in the municipality or regional district in which the rental unit is located to determine the requirements."

While I accept the landlord's testimony and description of works that may be required in the rental unit, I find the lack of detail related to the repair works to be troubling. There are recourses under the *Act* which allow a landlord to inspect a rental suite. The landlord acknowledged at the hearing that he did not have an accurate picture of the work that was required in the unit because he had not inspected the rental unit and I find no evidence that the landlord had letters from the municipality as described in the

Policy Guideline to confirm that no permits were required to renovate the suite. I therefore find that the landlord has failed to show that he requires vacant possession of the rental unit for the repair works to be completed. For these reasons, I allow the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy.

This tenancy shall continue until it is ended in accordance with the *Act*. As the tenant was successful in his application, he may pursuant to section 72 of the *Act* recover the \$100.00 filing fee. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on **ONE** occasion.

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*.

The tenant may withhold \$100.00 from a future rent payment on **ONE** occasion in satisfaction for a return of the filing fee.

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 26, 2018

Residential Tenancy Branch