



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' 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, MG ('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 tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' 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 landlord's agent testified that the tenants were served the 2 Month Notice by way of posting the 2 Month Notice on their door on April 24, 2018. As the tenants confirmed receipt of the 2 Month Notice, I find that this document was duly served to the tenants 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

This month-to-month tenancy began on September 1, 2017. Monthly rent is currently set at \$675.00 payable on the first day of each month. The landlord collected, and still holds, a security deposit in the amount of \$337.50.

The landlord issued the 2 Month Notice, with an effective move-out date of June 30, 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 4 unit complex was being renovated, with two units having already gone renovations, and the tenant's unit scheduled as the next unit to undergo these renovations. The landlord's agent testified that the landlord did not have any vacant units available for the tenant to move into, and the renovations required the unit to be vacant. The landlord's agent testified that the landlord was not in possession of any permits for this renovation. The landlord provided in evidence a Mutual Agreement to End Tenancy signed by the tenant agreeing to move out by June 30, 2018, the effective date of the 2 Month Notice.

The tenant testified that his unit did not require renovations, and he did not believe that renovations required for his unit justified the ending of this tenancy. The tenant testified that he did sign a mutual agreement, but did not move out as he had difficulty finding new housing. The tenant testified that the landlord did not issue the 2 Month Notice in good faith, and that the 2 Month Notice was issued in order for the landlord to increase the rent of the unit.

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". Although the landlord stated that they had issued the 2 Month Notice in order to renovate the suite, I find that the tenants had raised doubt as to whether this particular unit required the renovations the landlord testified to, and whether the landlord was in possession of any permits when the 2 Month Notice was issued to them. As the tenants 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

At the time of the hearing, the landlord had not obtained any permits for this renovation. The reason provided on the 2 Month Notice states clearly that the landlord must have any required permits already in place. Furthermore, 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 tenants to permanently vacate their rental unit for the specific purpose of renovations.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated April 24, 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 April 24, 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: July 4, 2018

Residential Tenancy Branch