



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”) and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant and an advocate for the Tenant (the “Tenant”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding and a copy of the Tenant’s evidence. However, the Landlord stated that he did not receive the evidence until one week before the hearing.

The Tenant provided testimony that her evidence was sent by registered mail and received by the Landlord on July 26, 2018. Due to the conflicting testimony of the parties, I accept the confirmation of the Landlord that he had reviewed the evidence received and therefore the Tenant’s evidence will be included as part of this decision.

However, the Tenant was notified that the evidence uploaded to the Residential Tenancy Branch less than 14 days before the hearing would not be considered as per the *Residential Tenancy Branch Rules of Procedure*. The Tenant stated that the late evidence submitted was confirmation of service and not evidence related to her application to cancel the Four Month Notice. Any evidence submitted after the deadline of 14 days prior to the hearing will not be considered.

The Landlord confirmed that he did not submit any evidence prior to the hearing. Although some evidence was noted as uploaded by the Landlord, the Tenant confirmed

that this was her evidence which was uploaded under the Landlord's access code in error.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the Four Month Notice be cancelled?

If the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant provided testimony that the tenancy began in December 2005 and that monthly rent is \$1,259.00. The Landlord did not have the exact details of when the Tenant moved in, but agreed it was likely in 2005. The Landlord was also in agreement as to the current monthly rent.

The parties were unsure of the security deposit amount that was paid at the outset of the tenancy, but the Landlord testified that the security deposit amount was \$797.00. The Tenant agreed that this was likely correct, but was not sure of the exact amount. The tenancy agreement was not submitted into evidence by either party.

The Landlord provided testimony that a Four Month Notice was served to the Tenant on May 28, 2018. However, when the Tenant testified to receiving the notice on June 2, 2018, the Landlord agreed that this may have been when it was served as he was unsure of the exact date. The Four Month Notice was signed by the agent for the Landlord on May 27, 2018.

The Four Month Notice states the effective end of tenancy date as September 30, 2018 and states the reason for the notice as the following:

- I am ending your tenancy because I am going to
 - Convert the rental unit for use by a caretaker, manager or superintendent of the residential property
- No permits and approvals are required by law to do this work

The Landlord served the Four Month Notice to the Tenant by leaving it in her mailbox. He testified that the notice was issued as they are trying to hire a property manager to take care of a number of properties run by the company of the Landlord. The rental unit will be offered to the property manager as a part of the employment contract.

However, the Landlord stated that they have not yet been able to hire someone, but hope to have the property manager hired by the time the Tenant moves out of the rental unit. The Landlord stated that they have a number of properties and chose this rental unit due to the proximity of where it is located in relation to the buildings that will be managed by the new employee.

The Tenant brought up that a notice served to her in June would end the tenancy at the end of October 2018, instead of September as stated on the Four Month Notice. The Landlord was in agreement that the date would automatically correct to end the tenancy on October 31, 2018.

The Tenant provided testimony that she does not believe that the Four Month Notice was issued in good faith. The Tenant submitted evidence that the Landlord has previously applied to convert the rental unit to a community care facility and believes this may still be the plan for the rental unit.

The Tenant also noted that the Landlord did not have any permits for converting the purpose of the rental unit and submitted evidence that any operational change to a residential unit requires a permit.

The Landlord agreed that last year they sought a permit to convert the rental unit to a care facility, but stated that they are now seeking to have a property manager move in, which does not require any permits. Instead, he stated that having a property manager reside in the rental unit would be a condition of the employment and does not mean the unit has to be designated as a caretaker unit.

The Tenant also questioned why she received a Notice of Rent Increase on July 27, 2018, with the rent increase to take effect on October 1, 2018.

The Landlord replied by stating that he was advised that due to the Tenant's application to cancel the notice, he should still proceed with issuing a rent increase in case the Four Month Notice is cancelled.

The Tenant questioned why the basement suite of the home had new tenants residing there and submitted evidence that the suite was illegal and should therefore be considered part of the full home. The Landlord responded that the basement suite is not the unit in question and the new property manager will only be residing in the upper level suite where the Tenant currently resides.

The parties were in agreement that the Landlord had offered the Tenant either the last month of rent compensation or to have one month of rent returned to her at the end of the tenancy, to comply with Section 51(1) of the *Act*.

Settlement was discussed, but the parties were not able to come to an agreement. The Landlord suggested that the hearing be adjourned so that he could have some time to secure employment with a new property manager and then provide evidence of such at the adjourned hearing.

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove that the reason for ending the tenancy is valid.

As the parties were not in agreement as to whether the Four Month Notice was issued in good faith by the Landlord to use the rental unit for a property manager, I find that the party with the burden of proof must provide evidence above and beyond that of the other party to prove that the notice is valid.

Although the Landlord testified that he is seeking an employee who will also reside in the rental unit, he did not submit any evidence of such. He also stated during the hearing that he has not yet hired anyone and suggested adjourning the hearing until such time as someone has been hired who is able to move into the unit.

I refer to *Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property* which states the following:

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

As the Tenant brought into question the good faith intent of the Landlord through her Application for Dispute Resolution, I find that the Landlord needed to establish his intent to use the rental unit for the purpose stated on the Four Month Notice.

The Landlord did not submit any evidence of his search for a property manager, and stated that no one has yet been hired. As such, I find that he has not established that he intends to do as stated on the notice or that a property manager will need to move in on the corrected end of tenancy date of the notice.

Policy Guideline 2 also states that if a tenancy is ended in accordance with Section 49(6) of the *Act*, and a permit is not required, the Landlord may need to submit proof that no permits are required.

Although permits may not be required to use the rental unit for a property manager, as the Tenant provided testimony and evidence that a permit was in fact needed, I find that the Landlord had the burden to prove that was not true.

When the Landlord's intentions for the rental unit were brought into question by the Tenant, the Landlord did not submit any evidence to substantiate their need for the rental unit for a property manager. As such, I find that the Landlord has not shown, on a balance of probabilities, that the rental unit will be used as stated on the Four Month Notice.

I also find that the Landlord's request for an adjournment to wait until he has proof that he has hired someone who needs to move in, is evidence that he does not yet need the rental unit. The Landlord is at liberty to issue a new Four Month Notice if the rental unit is needed for a caretaker or property manager and he has evidence that this employee will be moving into the rental unit in question.

Based on the above, I find that the Four Month Notice dated May 27, 2018 is hereby cancelled and of no force of effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful in their application, they are entitled to the recovery of the filing fee paid for the Application for Dispute Resolution, pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 one time from her next monthly rent payment.

Conclusion

The Four Month Notice dated May 27, 2018 is **cancelled and of no force or effect**. This tenancy continues until ended in accordance with the *Residential Tenancy Act*.

In accordance with Section 72, the Tenant may **deduct \$100.00** from her next monthly rent payment to recover the filing fee paid for this application.

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: August 17, 2018

Residential Tenancy Branch