



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FFT OLC

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- an order that the Landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 4 Month Notice dated August 31, 2018, on or about that date. The landlord confirmed receipt of the tenant's application for dispute resolution dated September 12, 2018 and evidence. The landlord testified that they had not submitted any evidence of their own. Based on the undisputed testimonies of the parties I find that all of the materials were served on the respective parties in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application from the Landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy began in April, 2017. The current monthly rent is \$1,700.00 payable on the first of each month.

The landlord said that they have received numerous fines from the municipality regarding the existence and condition of the rental suite. The landlord said they are uncertain what the municipality will ultimately order is required and what scope of repairs or renovations may be necessary. The landlord did not submit any documentary evidence.

The tenants dispute the 4 Month Notice. They explained that the portion of their application seeking the Landlord comply deals with the issuance of the 4 Month Notice.

Analysis

Section 49(8)(b) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (6) the tenant may, within thirty days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 4 Month Notice was received on or about August 31, 2018 and the tenants filed their application for dispute resolution on September 12, 2018. I find that the tenants are within the time limits provided under the *Act* to dispute the 4 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 4 Month Notice. The landlord testified that they have received fines and letters from the municipality but failed to submit any documentary evidence. The landlord testified that they are uncertain of what might be the scope of repairs required by the municipality and whether they would necessitate this tenancy ending.

Based on the evidence presented, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 4 Month Notice.

As the tenants' application was successful the tenant may recover the filing fee for this application. As the tenancy is continuing I allow the tenant to make a one-time

deduction of \$100.00 from the next monthly rent owed in full satisfaction of their monetary award.

Conclusion

The 4 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant may make a one-time deduction of \$100.00 from their next monthly rent payment.

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: October 4, 2018

Residential Tenancy Branch