



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL- 4M FFT

Introduction

This hearing dealt with the tenant's 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 ("4 Month Notice"), pursuant to section 49; 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 their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit written evidence for this hearing.

As the tenant confirmed receipt of the 4 Month Notice dated July 27, 2018, I find that this document was served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on May 15, 2017. Monthly rent is currently set at \$2,200.00, payable on the first day of each month. The tenant continues to reside in the rental unit.

The landlord issued the 4 Month Notice, with an effective move-out date of November 30, 2018 in order to demolish and rebuild the house.

The landlord purchased the property approximately two years ago, and took over the tenancy from the previous landlord. The landlord testified that she had disclosed to the tenant that her plan was to demolish and rebuild the house. The landlord testified that she has not yet obtained any permits, but that they were currently being processed. She testified that she had issued the 4 Month Notice before obtaining the permits in order to give the tenant more notice to vacate the rental home. The landlord expressed concern about the time it would take to end this tenancy, and the delay caused by the tenant's decision to dispute the 4 Month Notice.

The tenant is disputing the 4 Month Notice on the grounds that no permits have been obtained by the landlord in order to demolish this property.

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 demolish the rental unit or home.

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".

I find that it was undisputed by both parties that the landlord has not yet obtained any permits to demolish the property at the time of the hearing, or at the time that the landlord served the tenant with the 4 Month Notice. The landlord did not submit any written evidence, including copies of her application for any permits. I find that the landlord has not met the burden of proof to show that the 4 Month Notice was issued in good faith, and that the landlord had all the necessary permits and approvals required by law to demolish the home.

Accordingly, I allow the tenant's application to cancel the 4 Month Notice. The landlord's 4 Month Notice, dated July 27, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant's application was successful, I find the tenant is entitled to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 4 Month Notice is allowed. The landlord's 4 Month Notice, dated July 27, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 17, 2018

Residential Tenancy Branch