



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M ERP FFT PSF RP

Introduction

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

- Cancellation of a 4 Month Notice to End Tenancy for Landlord's Use (the "4 Month Notice") pursuant to section 49;
- An order for repairs or emergency repairs pursuant to section 33;
- An order that the landlords provide services or facilities required under the Act, regulations or tenancy agreement pursuant to section 65; and
- Authorization to recover the filing fee 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 make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by their interpreter.

The tenant testified that they received the 4 Month Notice dated August 28, 2018 on that date and filed their application for dispute resolution on September 21, 2018. The tenant testified that they served the application package on each of the landlords by registered mail sent September 22, 2018. The tenant submitted Canada Post tracking numbers and receipts as evidence of service. The landlord did not dispute that they were served with the tenant's materials. I find that the landlords were served in accordance with sections 88 and 89 on September 27, 2018, five days after mailing. The landlord did not submit any evidence.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not are the landlords entitled to an order of possession?

Should the landlords be ordered to perform repairs?

Should the landlords be ordered to provide services or facilities?

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

Background and Evidence

The tenants have been residing in the rental unit since January, 2017. The current fixed term tenancy began in January, 2018 and is scheduled to continue until January, 2019. The monthly rent is \$2,000.00 payable on the first of each month. A security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 were paid at the start of the tenancy and is still held by the landlords.

The landlords issued the 4 Month Notice dated August 29, 2018 with an end of tenancy date of December 31, 2018 stating that the reason for the tenancy to end is that the landlord will perform renovations or repairs that are so extensive the rental unit must be vacant.

The landlord testified that the renovations are for the purpose of listing the property for sale and that no permits are required for the work they intend to perform. The landlord did not provide details about the nature of the work intended, the scope, the timeline, or what arrangements have been made. The landlord provided no documentary evidence in support of their testimony and did not articulate what work they intend to perform.

The tenant submits that the rental unit require some repairs as appliances are not working. The tenant requested the following issues be resolved:

1. The gas fireplace to be fixed
2. The air conditioning unit be fixed
3. The glass shower door be fixed
4. The master bathroom faucet be replaced and fixed

The tenant testified that the landlords have been made aware of the deficiencies but they have not been resolved.

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 August 29, 2018 and the tenants filed their application for dispute resolution on September 21, 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 on a balance of probabilities. The landlord provided little information about the nature or scope of work they intend to perform, submitted no documentary evidence in support of their testimony and simply repeated their assertion without giving details.

Under the circumstances I find that the landlords have failed to meet their evidentiary burden to show on a balance of probabilities that the rental unit must be vacant as the landlord intends to perform work requiring the suite to be uninhabited. Accordingly, I cancel the 4 Month Notice of August 29, 2018. It is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

I accept the tenant's undisputed evidence that they have requested repairs to be performed by the landlords and the deficiencies in the rental unit have yet to be resolved. I accept the tenant's evidence that repairs are required for the items they listed. Accordingly, I issue the following order for repairs to be arranged and completed by the landlord within 4 weeks of this decision by November 30, 2018.

1. The gas fireplace to be fixed (by a licensed professional)
2. The air conditioning unit be fixed (by a licensed electrician)
3. The glass shower door be fixed
4. The master bathroom faucet be replaced and fixed

If the repairs are not completed within that timeframe the tenants are at liberty to apply for a monetary award for damages.

As the tenants' application was successful the tenants are entitled to recover their filing fee from the landlords. As this tenancy is continuing the tenants may satisfy their award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

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 landlords are ordered to perform the following repairs by November 30, 2018:

1. The gas fireplace to be fixed (by a licensed professional)
2. The air conditioning unit be fixed (by a licensed electrician)
3. The glass shower door be fixed
4. The master bathroom faucet be replaced and fixed

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled 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: November 2, 2018

Residential Tenancy Branch