



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFL

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 Demolition, Renovation, Repair or Conversion of Rental Unit (the "4 Month Notice") pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application therefore I find that the landlord was duly served with the application in accordance with sections 89 of the *Act*. The landlord confirmed that he did not provide any documentary evidence for the hearing.

The tenant testified that the landlord was served with a subsequent evidence package on November 20, 2018 by registered mail. The landlord denied receipt of this subsequent package. The tenant provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this Decision. The Canada Post website shows that a notice card was left on November 28, 2018, a day before the hearing. Based on the above, I am satisfied that the landlord did not receive the evidence and the tenant did not serve the evidence within the prescribed 14 days set out by the Rules. For these reasons, I have not relied on the tenant's evidence package to form any part of my decision.

Issue(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 an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The parties testified that the landlord assumed this tenancy in June of 2018, when the landlord purchased the property from the previous landlord. The parties agreed the tenancy began approximately 10 years ago, and rent in the amount of \$830.00 is payable on the first of each month. The landlord assumed a security deposit in the amount of \$375.00 from the former landlord, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 4 Month Notice dated September 30, 2018. The 4 Month Notice indicates that the landlord is ending the tenancy to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord testified that he is not converting the unit for use by a caretaker. He testified that his partner, another owner plans to occupy the unit. He testified that he issued the 4 Month Notice instead of a 2 Month Notice for Landlord Use in consideration of the upcoming holidays.

In reply, the tenant testified that the landlord has not issued the 4 Month Notice in good faith as the reasons provided in the notice and during the hearing are not true. The tenant contended that other tenants in the building have received notices; some of which are identical to his; for conversion of the unit for a caretaker. The tenant argued the landlord was evicting tenants for the purpose of renovation.

Analysis

Section 49(6) of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to convert

the rental unit for use by a caretaker, manager, or superintendent of the property. In the case of conversion for a caretaker, permits are not required.

The burden of proving the reasons for ending a tenancy lies with the landlord. In this case, I accept the landlord's testimony that he is not converting the unit for use by a caretaker and as such has failed to prove the reasons behind the notice. Based on the above, I uphold the tenant's application to cancel the 4 Month Notice.

As the good faith of the landlord has been brought into question, I order the landlord to issue any future notices to end tenancy in accordance with the *Act*.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 4 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The landlord is ordered to issue any future notices to end tenancy in accordance with the *Act*.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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 29, 2018

Residential Tenancy Branch