



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a Four Month Notice to End Tenancy For Demolition, Renovation or Conversion of Rental Unit, (the “Notice”), issued on November 5, 2018

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the tenancy began February 2014. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$325.00 and a pet damage deposit of \$275.00.

The article student for the landlord stated that the roof of the rental unit has been leaking and there is some damage to the bathroom ceiling.

The article student stated that the property was built in 1949, and due to the age of the structure there are a lot of unknown factors that may occur during the repairs that required vacant possession of the property.

The article student stated that the insulation might contain asbestos, and there might be mould and structural damage that may need to be repaired.

The article student stated that the landlord has filed two letters as evidence from a contractor, indicating what is needed in order to do the work. Filed in evidence is a work permit.

The letter from LS, undated, reads in part,

“ 1 – Tenant out; 2 - not responsible for any damage for tenants belongings...; **3 – No one knows extent of damage or repairs**; 4 – remove ceiling as necessary; 5 – deal with mold/dry-rot...; 6- will remove roofing membrane and will replace.

[Emphasis added.]

The letter from BM, dated December 3, 2018, reads in part,

“... upon investigation of attic found general area of leak, checked roof in that general area, and found multiple old roof repairs and multiple exposed roofing nail heads. All of which are potential leak areas....

Repair – Used a gutter & flashing silicone to edge seal around insert shingle repairs and over top of all exposed nail heads. I believe this fulfills the work I was hired to do.”

[Reproduced as written.]

The tenant testified that the landlord is just making assumption and using fear tactics. The tenant stated that there has never been any discussion that there might be asbestos and they believe their unit was a later addition to the property.

The tenant testified that they are fully prepared to accommodate the landlord in order to make the necessary repairs. The tenant stated they can move and cover up their furniture, if required. If asbestos is found, they can if necessary, remove their belonging for a period of time. The tenant stated that they have tenant insurance.

Analysis

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

In this case, I am not satisfied that the landlord has proven that the tenancy must end do to extensive renovations.

The landlord has not had the premises properly assessed. The letter for LS, confirms that they do not know the extent of the damage. I find this letter concerning and make me question the credibility of the writer as it is unreasonable to stated that the tenant must not be in the premises, if they do not know the scope of the work.

What would be reasonable is for the landlord to have a full inspection of the premises to determine first, the scope of the work required. I find it highly unlikely that a professional contractor would not be able to determine the work required. Such as having the insulation tested for asbestos, removing the insulation to determine if there is a mould or any structural damage.

Further the letter of BM appears to be genuinely written; BM indicated that they have inspected and made repairs to the roof. There is suggestion in their letter that they discovered any toxic mould or structural damage.

Furthermore, even if there were unknown issues found while the repairs are made, the tenant has provided evidence that they will accommodate the landlord during the repair process.

Based on the above, I find the landlord has not provided sufficient evidence to support that the rental unit required vacant possession. Therefore, I cancel the Notice, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Since the tenants were successful with their application. I find the tenants are entitled to recover their filing fee from the landlord. The tenant is authorized to deduct the amount of \$100.00 from a future rent payable to the landlord.

Conclusion

The tenant's application to cancel the Notice is granted. The Notice has no force or effect. The tenancy will continue. The tenant is authorized a onetime rent reduction of the amount of \$100.00 from a future rent payable to the landlord to recover the cost of 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: December 21, 2018

Residential Tenancy Branch