



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Four Month Notice) pursuant to section 49; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord's agent (the landlord) and the tenant's legal counsel 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.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Preliminary Matters

At the outset of the hearing the tenant's legal counsel requested an adjournment of the proceedings due to the inability of the tenant to participate due to medical reasons.

The landlord objected to the adjournment due to the delay in proceeding with their renovations which have already been delayed waiting for this hearing to take place as their previous Application for an Order of Possession was dismissed with leave to reapply.

Rule 7.9 of the Residential Tenancy Branch Rules of Procedure (the Rules) establishes the criteria for granting an adjournment and whether an adjournment is required to provide a fair opportunity for a party to be heard and the possible prejudice to each party.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

As the tenant's legal counsel submitted evidence for this hearing on December 20, 2018, and this hearing took place on January 31, 2019, I find that they had adequate time to prepare to act on the tenant's behalf in this matter. I further find that it would prejudice the landlord by having to wait an additional amount of time for a resolution regarding their notice to end tenancy. For the above reasons I decline the request for adjournment put forward by the tenant's legal counsel (the tenant).

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and tenant's evidence.

The landlord confirmed that they did not submit any evidence to the Residential Tenancy Branch or to the tenant and would rely on their oral submissions.

In a previous Residential Tenancy Branch Decision for the landlord's Application, which was dismissed with leave to reapply, the arbitrator determined that the tenant was deemed served with the Four Month Notice on November 27, 2018.

Issue(s) to be Decided

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

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

Background and Evidence

All parties agreed that this tenancy began on July 01, 2014. The landlord submitted that the monthly rent was increased from \$2,460.00 to \$2,558.00 after the last lease expired by notifying the tenant with an e-mail. The landlord confirmed that they currently retain a security deposit in the amount of \$1,100.00.

The tenant submitted a signed copy of the landlord's July 23, 2018, Four Month Notice into evidence. In the Four Month Notice, requiring the tenant to end this tenancy by November 30, 2018, the landlord cited the following reason to end the tenancy:

Perform Renovations or repairs that are so extensive that the rental unit must be vacant

On the Four Month Notice, the landlord has indicated that they intend to re-do the entire flooring, paint the entire suite and repair/replace countertops. The landlord has checked a box which indicates that no permits and approvals are required by law to do this work.

The tenant entered into written evidence:

- Copies of e-mails from a realtor, and another agent of the landlord, to the tenant in April 2018 regarding the landlord putting the unit up for sale;
- A copy of an e-mail from the landlord's agent to the tenant dated October 02, 2018, which indicates that the owner intends on occupying the rental unit after the renovations are completed; and
- A copy of a submission from legal counsel dated December 20, 2018, in which it is argued that the Four Month Notice was not served in good faith and that there is no reason to evict the tenant for the renovations which are proposed. The submission states that the tenant has offered to purchase the property or to continue the tenancy without renovations under the new rent amount.

The landlord submitted that the owner of the rental unit intends on doing extensive renovations to the rental unit which require it to be vacant. The landlord testified that no permits or approvals are required to do the proposed work. The landlord stated that the owner of the rental unit was considering selling the rental unit in April 2018 but changed their mind and decided that they were going to occupy the rental unit after the renovations are completed. The landlord maintained that the tenant has too many items

in their rental unit to allow the landlord to perform the renovations with the tenant maintaining their occupancy throughout the work.

The tenant submitted that the landlord has not issued the Four Month Notice to the tenant in good faith as they first intended on selling the rental unit, then intended on doing renovations in July 2018 and then determined that the owner was going to occupy the rental unit after the renovations as stated in their e-mail on October 02, 2018. The tenant questioned whether the owner really intended on performing the renovations as no evidence of the proposed renovations have been provided by the landlord to the tenant at any time such as estimates or plans of the renovations. The tenant further submitted that the proposed renovations are not that extensive and could be performed with the tenant in the rental unit

Analysis

Section 49 (6)(b) of the *Act* allows a landlord to end a tenancy if the landlord has all necessary permits and approvals required by law, and intends in good faith, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Section 49 (8)(b) of the *Act* provides that upon receipt of a Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit the tenant may, within 30 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Four Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Four Month Notice.

As the tenant disputed this notice on December 20, 2018, and since the Four Month Notice was deemed served to the tenant on November 27, 2018, in a previous decision, I find that the tenant has applied to dispute the Four Month Notice within the time frame provided by section 49 of the *Act*. For the above reasons, I find that the landlord bears the burden to prove the Four Month Notice was issued to the tenant in good faith and that they truly intend on doing what they said they would do on the Four Month Notice.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

RTB Policy Guideline #2 states that when a landlord ends a tenancy under section 49 (6), they must have the permits or approvals required by law before they can give the tenant notice and that it is not sufficient to give notice while in the process of or prior to

obtaining permits or approvals. The Guideline further states that if no permits or approvals are required by law, the landlord should obtain written proof of this.

In the case before me, I find the landlord has failed to provide sufficient evidence to corroborate their submission that the rental unit is going to be renovated in a manner that requires it to be vacant. I find that the landlord has not provided any actual documentary evidence to support their stated intentions such as estimates or quotes of the work to be completed. I further find that the landlord has not provided any confirmation from the municipality regarding permits or approvals not being required to perform the proposed renovations.

RTB Policy Guideline #2 establishes that good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or what they are required to do under the legislation or tenancy agreement. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I find that the landlord's admittance that the owner intends on occupying the rental unit after the renovations brings into question the good faith of the Four Month Notice as ending the tenancy for the landlord moving into the rental unit requires a different notice than for performing renovations which require the rental unit to be vacant. I further find that the previous e-mails regarding the owner putting the rental unit up for sale a few months prior to issuing the Four Month Notice also brings the good faith of the notice to end the tenancy into question. I find that these undisputed facts impact the credibility of the landlord's testimony and brings the good faith of the Four Month Notice into question as to whether there is an ulterior motive for ending the tenancy.

RTB Policy Guideline #2 states that a landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work. If the repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.

Although the landlord states that it would not be reasonable to perform the renovations with the tenant in the rental unit, I find that the tenant appears quite willing to work with the landlord. As the burden of proof is with the landlord, I find that they have not provided sufficient evidence to demonstrate that they cannot perform any required renovations or repairs with the tenant in the rental unit.

I find that one of the landlord's primary arguments against the tenancy continuing throughout the renovations is regarding the owner's intentions to occupy the rental unit. I find that this reason requires a different notice to end tenancy for landlord's use and is not sufficient grounds to end the tenancy with a Four Month Notice for renovations to be completed.

For the above reasons, I find the landlord has not provided sufficient evidence to demonstrate that they are going to perform renovations or repairs so extensive that it requires the rental unit to be vacant. Therefore, the Four Month Notice dated July 23, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

As the tenant provided no evidence or testimony of any services or facilities not being provided by law, I dismiss that portion of the tenant's Application, with leave to reapply.

Conclusion

The landlord's Four Month Notice dated July 23, 2018, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the *Act*.

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: January 31, 2019

Residential Tenancy Branch