



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, ERP, OLC, RP, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”), for an Order for the Landlord to complete emergency repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, for an Order for the Landlord to complete regular repairs, for a reduction in rent due to services, facilities or repairs not completed, and for the recovery of the filing fee paid for this application.

The Landlord and an agent for the Landlord (the “Landlord”) were present for the teleconference hearing, as were five tenants that reside in three separate rental units in the rental building. As noted in the Preliminary Matters section below, after some clarification on the application, three of the tenants exited the call and the hearing continued with the two Tenants who reside in a lower level suite of the home. Therefore, this decision addresses only the rental unit of the two Tenants who reside at the address listed on the front page of this decision.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The initial Application for Dispute Resolution was filed regarding three separate addresses and three separate tenancies. As such, this matter was clarified at the outset of the hearing. The five tenants present at the outset of the hearing confirmed that they each received a Four Month Notice to end their tenancies. They also stated their understanding that since the reasons on the Four Month Notices were the same, they were able to dispute the notices through one Application for Dispute Resolution. The tenants stated that they received advice to apply through one application by the Residential Tenancy Branch.

However, the parties were informed that separate applications to dispute each notice were required. As only one Application was filed, the rental address on the Application would be dealt with through the current hearing. The remaining tenants were advised that they at liberty to file a new Application to dispute the Four Month Notice and to request more time in which to do so. The parties were informed that it would be up to an arbitrator whether their request for more time would be granted.

Therefore, the three tenants that reside in the two upper level rental units exited the hearing and the hearing continued with the Landlord and the two Tenants residing in one of the lower level rental units. Pursuant to Section 64(3)(c) of the *Act*, the Application for Dispute Resolution was amended remove the name of the neighbouring tenants.

As stated in rule 2.3 of the *Rules of Procedure*, claims on an Application for Dispute Resolution must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a notice to end tenancy, I exercise my discretion to dismiss the remainder of the claims on the Tenants' application, with leave to reapply.

The Tenants were also asked if they would like to proceed with their claim for emergency repairs, but they confirmed that this may have been a claim of one of the other tenants as they do not currently have a request for emergency repairs. As such, this decision will address the Tenants' application to cancel the Four Month Notice and their request for the recovery of the filing fee paid for the application.

Issues to be Decided

Should the Four Month Notice be cancelled?

If the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began approximately six years ago. A security deposit and a pet damage deposit were paid totalling \$1,000.00. Current monthly rent is \$1,224.00.

On October 22, 2018, the Landlord served the Tenants by registered mail with a Four Month Notice. The Four Month Notice, dated September 30, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- I am ending your tenancy because I am going to:
 - Perform renovations or repairs that are so extensive that the rental unit must be vacant

The Four Month Notice also states that the Landlord has the permits and approvals required by law to complete the work and that some of the work does not require permits or approvals. The Four Month Notice includes details of the work as the following:

- Upgrade heating
 - will have its own heating system
 - gas will have to be disconnected. 2 weeks minimum
- Upgrade electrical
 - will have its own fuse box there will drywall and painting after installations. Power will be disconnected for up to a month
- Insulation upgrade
 - Fire wall will have insulation upgrade. Walls will be opened up
- New roof
 - full roof replacement

(Reproduced as written)

The effective end of tenancy date of the Four Month Notice was stated as March 1, 2019.

The Landlord testified that the rental building requires significant upgrades and repairs, many of which the tenants in the home have been requesting. The Landlord further stated that he has plans to update the electrical system from 100A to 200A which will likely cause a disruption in power to the home for a few days.

The Landlord stated that he also has plans to install a gas insert for the fireplace which will require work outside of the home, including the digging of a trench around the home. He noted that this will be disruptive to the Tenants and impact their ability to access their rental unit.

The Landlord testified that he will also be completing a full replacement of the roof. The Landlord referenced a roof inspection report dated July 25, 2018 that was submitted in the Tenants' evidence package. The report notes many concerns with the roof and recommend it be fixed and/or replaced. The Landlord submitted an invoice from a roofing company dated December 20, 2018 which states that an area of concern was repaired and that a complete replacement of all roof flashing, drains and vents is required.

The Landlord stated that with the electrical renovations required in the home, there will be significant damage to the walls that will require repairing. He stated that this will make it difficult for the Tenants to remain in their rental unit as the replacement and repair of the drywall could take many weeks to complete.

The Landlord also stated his plans to have soundproofing completed throughout the entire home. He stated that as part of this work, the walls will likely need to be opened completely, causing concern for the Tenants' privacy and safety. He stated due to this, having the home empty will allow him to complete the work quickly and finish it all at once without disrupting the tenants in the home and without causing unnecessary delays.

The Landlord also stated his plans to install separate heating into the lower level suites, including the Tenants' rental unit. He submitted that the lower level units are currently on the same system as the upper level units which he stated causes the lower level to be too cold while the upper level is too hot.

The Landlord submitted four permits into evidence which he stated are provincial and not issued by the municipality. The first is an Electrical Installation Permit, dated September 27, 2018 which states that the scope of work includes an electrical service

upgrade to 200A. The second permit is similar, but for the second half of the duplex which is listed under a different address.

The third permit is a Gas Installation Permit, dated September 29, 2018 stating that a gas insert fireplace will be installed. The fourth permit is the same Gas Installation Permit for the other side of the duplex.

The Landlord also submitted an email from his electrician dated December 10, 2018. The email states that the work will commence in March 2019 and will take approximately 6-8 weeks at a minimum. The emails outline the work as follows:

- 200A upgrade to upper level rental units
- Install 100A sub panels to lower level rental units
- Remove aluminium wiring as required
- Install baseboard heating in both lower level units
- Rough in new laundry rooms in each rental unit

The Landlord stated that he has plans with a contractor and other professionals to begin the work in March 2019 but was unable to finalize anything until the outcome of the Dispute Resolution proceeding. The Landlord testified that completing this amount of work, which he estimates at \$70,000.00, will be a logistical nightmare if the Tenants remain residing in the rental unit.

The Landlord further stated that it is difficult to know what additional work may be required until the work commences. He also stated that as part of the renovations and repairs required, the power to the rental unit may have to be disconnected for days at a time.

The remainder of the Landlord's 51 pages of documentary evidence included text message and email communication with the tenants that reside in the different rental units in the home. The communication was regarding repairs and other issues discussed throughout the tenancies and was not necessarily specific to this tenancy.

The Tenants stated they had no communication from the Landlord regarding the work he planned to complete until they were served with the Four Month Notice. They stated that they are willing to remain living in the rental unit throughout the repairs and are willing to work with the Landlord to ensure there is reasonable access to their rental unit.

The male Tenant stated that he is an electrician and is therefore aware that the electrical work planned is often completed while residents remain in the home. He further stated that 6-8 weeks seems extreme for the intended repairs but stated that should the work take this long they would still be willing to remain in the home and provide access to their rental unit as needed. The Tenants also stated that should the electricity to their rental unit be disconnected for a period of time, they are able to stay elsewhere temporarily.

As for the repair or replacement of the roof, the Tenants stated that roof repairs are often completed with residents still residing in the home. The Tenants submitted that an electrical service upgrade can be completed in one day and that the majority of work for the gas fireplace insert will be completed outside. They noted their belief that this work will likely cause the gas to be disconnected for one day.

The Tenants further testified that the soundproofing work should not be too disruptive as their unit contains one small wall that is connected to the other units. They also stated that while the soundproofing and drywall work may take two weeks total, this is for the whole home and not the time for their unit which should be a few days at the most. The Tenants stated that they have lived through renovations in the past and are aware of the dust, noise and other disruptions that may be present.

The Tenants submitted into evidence an email from the municipality, dated December 17, 2018 stated that no permits have been applied for the property during the past three months. They also submitted a copy of zoning bylaws indicating that it is not legal to have a secondary suite in a duplex.

The Tenants testified that the rental property was put up for sale in August 2018 without any notice to them and that the 'For Sale' sign was removed when they were served with the Four Month Notice. They questioned whether the Landlord had ulterior motives for ending their tenancy, other than the completion of repairs.

The Tenants stated that they understood installing a gas insert into the fireplace may cause some disruption outside and noted that if there was a trench they could put a board over it to be able to access their unit. The Tenants agreed that the repairs would likely be easier if the home were empty. However, they also stated their desire to continue the tenancy and their willingness to accommodate the work so as to not cause any unnecessary delays.

Analysis

Section 49(8)(b) states that a Tenant has 30 days to dispute a Four Month Notice served pursuant to Section 49(6) of the *Act*. As the Landlord served the Four Month Notice by registered mail on October 22, 2018 and the Tenants applied to dispute the notice on November 14, 2018, I find that they applied within the timeframe provided by the *Act*. Therefore, the issue is whether the reasons for the Four Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

Section 49(6) of the *Act* states the following in regard to ending a tenancy with a Four Month Notice:

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
 - (a) demolish the rental unit;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the *Strata Property Act*;
 - (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
 - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
 - (f) convert the rental unit to a non-residential use.

In this matter, the Four Month Notice states that the Landlord intends to renovate or repair the rental unit in a manner that requires the unit to be vacant, pursuant to Section 49(6)(c). However, the parties were not in agreement as to whether the intended repairs require the unit to be vacant.

I also refer to *Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property* which states in part the following:

Section 49 (6) does not allow a landlord to end a tenancy for the purpose of renovations or repairs if any of the following circumstances apply:

- the landlord does not have all necessary permits and approvals required by law;
- the landlord is not acting in good faith;
- the renovations or repairs do not require the unit to be empty (regardless of whether it would be easier or more economical to conduct the renovations or repairs if the unit were empty); or
- it is possible to carry out the renovations or repairs without ending the tenancy (i.e. if the tenant is willing to temporarily empty and vacate the unit during the renovations or repairs, and then move back in once they are complete).

During the hearing, the Landlord stated many times that completing the repairs with the Tenants still in the home would be very difficult in regard to coordinating the workers and the disruption to the Tenants. However, the Landlord did not submit any documentary evidence to establish that the home needs to be empty for the repairs to be completed. An email was submitted from an electrician outlining work to be done but does not state that this work cannot be completed if there are people residing in the home.

I agree that the repairs being completed would likely be easier to complete should the home be empty. However, I do not find sufficient evidence from the Landlord to establish that the rental unit must be empty for the repairs to be completed. As such, I find that this is not sufficient reason to end the tenancy.

The Tenants stated that they are willing to accommodate the repairs, including possible power outages and drywall repairs between the rental units. As stated in Policy Guideline 2, a tenancy cannot be ended if the repairs do not require the rental unit to be empty and if it is possible to complete the repairs while the tenancy continues.

Based on the testimony of both parties and the evidence before me, I find that the intended repairs can be completed without ending this tenancy. Therefore, due to insufficient evidence, I am not satisfied that the Landlord met the burden of proof to establish that the rental unit must be empty in order to complete the intended repairs. Accordingly, the Tenants were successful in their application to cancel the Four Month Notice. This tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful, pursuant to Section 72 I award them the recovery of the filing fee paid for the application in the amount of \$100.00. The Tenants may deduct \$100.00 from their next monthly rent payment.

Conclusion

The Four Month Notice dated September 30, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 from their next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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 04, 2019

Residential Tenancy Branch