Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKSIDE REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, LRE, MNDCT, PSF, FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 27, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion (the "Four Month Notice") dated November 27, 2018;
- an order restricting or suspending the Landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss;
- an order to provide a service or facilities required by the Tenancy Agreement or Law; and
- an order granting the return of the filing fee.

The Tenant, and the Landlord's Agents M.D. and G.M. attended the hearing, each providing affirmed testimony.

The Tenant testified that she served the Application package as well as documentary evidence to the Landlord by registered mail on December 31, 2018. M.D. confirmed receipt. Accordingly, I find the above documents were sufficiently served, pursuant to sections 88 and 89 of the *Act*.

M.D. testified that he served the Landlord's documentary evidence onto the Tenant via email on January 9, 2019. M.D. stated that he also served the Landlord's evidence by placing it in an envelope and leaving it on the ground leaned up against the Tenant's door. In response, the Tenant testified that she did not receive any evidence from the Landlord. The Tenant denied receiving the email or envelope at her door.
The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules

of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;
(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
(h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
(i) as ordered by an Arbitrator

M.D. testified that he served the Landlord's evidence via email as well as placing a copy of the evidence in an envelope and leaving it on the ground leaned up against the Tenants door. I find that neither of these methods of service to be acceptable according to Section 88 of the *Act*.

The Tenant indicated that she did not receive the Landlord's evidence. According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act,* may or may not be considered during the hearing. I accept that the Tenant did not receive the evidence; therefore the only evidence I will consider from the Landlord is their oral testimony during the hearing.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the Application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Four Month Notice dated November 27, 2018.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, an order to restrict or suspend the Landlord's right to enter, and an order to provide services or facilities required by the Tenancy Agreement or by Law are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice dated November 27, 2018, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on October 15, 2012. Currently, rent in the amount of $1,011.07 is due to be paid to the Landlord on the first day of each month. A security and pet deposit in the amount of $925.00 were paid to the Landlord. Neither party submitted a copy of the Tenancy Agreement.

M.D. testified that he served the Tenant in person with the Four Month Notice on November 27, 2018 with an effective vacancy date of March 31, 2019. The Tenant confirmed having received the Four Month Notice on the same day. The Landlord's reason for ending the tenancy on the Four Month Notice is;

> "*To perform renovations or repairs that are so extensive that the rental unit must be vacant*"

The Tenant submitted a copy of the Four Month Notice which explains the details of the work indicating that;

"*Due to multiple Tenant misuse, toilet overflows the owner got a 3rd party report identifying severe sewage contamination under the Bthrm/ Hallway/ Lvgrm floors. Owner must remove all flooring and baseboards to replace, will also repaint*"

[Reproduced as Written]

M.D. testified that he received information from the Building Strata Manager stating that the occupant in suite 202 had reported that there was water damage coming from their ceiling in their rental unit. Upon further inspection, it was revealed that the source of the water was coming for an overflowed toilet in the Tenant's rental unit above in suite 302. The Landlord followed up by hiring a third party to conduct an assessment to determine the extent of the damage. The Landlord received a report on October 26, 2018 indicating that there was moisture under the flooring in the bathroom as well as the hallway leading to the bathroom. The Landlord testified that it was suggested that the flooring and baseboards be removed to expose the full extent of the damage in an attempt to effectively mitigate the damage.

G.M. testified that the building is 10 years old and that once a section of flooring is removed, it would be unlikely that the Landlord would be able to find similar flooring to match the remaining floors. As a result, G.M. indicated that the entire flooring in the suite may need to be removed and replaced. Furthermore, G.M. highlighted the fact that sewage water is dangerous and that he is concerned about the health and safety of those residing in the building. G.M stated that if moisture is apparent throughout the unit and into the kitchen, it could be that the kitchen cabinets would also need replacing.
In response, the Tenant indicated that this is the third time that her toilet has overflowed as a result of her autistic son over flushing. The Tenant testified that after the second occasion, she was required to pay for the damages caused by the flood in the amount

of $1,155.00. The Tenant provided a copy of the June 2017 receipt into evidence. The Tenant stated that she was not required to vacate her unit and that there were no concerns regarding health issues at that time.

The Tenant confirms that a third party inspector attended her residence to assess the damage. The Tenant indicated that the inspector did not check any other areas aside from the washroom and hallway leading to the washroom. The Tenant doesn't feel as though there is any damage to her rental unit requiring the Landlord to have vacant possession of the rental unit to repair.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states that 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord served the Tenant with the Four Month Notice in person on November 27, 2018 with an effective vacancy date of March 31, 2019. The Tenant confirmed having received the notice on the same date. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8)(b) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within 30 days after the date the Tenant receives the notice. The Tenant received the Four Month Notice on November 27, 2018 and filed their Application on December 27 2018. Therefore, the Tenant is within the 30 day time limit under the *Act*.

I find that the Landlord has provided insufficient evidence to demonstrate the full scope of the damage to the rental unit, if any, and the extent of any repairs required. Furthermore, if repairs are required, I find the Landlord has provided insufficient evidence to demonstrate that any such repairs are so extensive that the rental unit *must* be vacant in order to perform these repairs. In addition, the parties agreed that repairs were already completed to remediate damage caused by the flooding of the toilet in June of 2017, and I note that those repairs did not require vacant possession of the

rental unit. As a result, I question the Landlord's unsupported assertion that repairs for this same issue now require vacant possession.

In light of the above, I cancel the Four Month Notice, dated November 27, 2018.

I order the tenancy to continue until ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the $100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

Conclusion

The Tenant's application is successful. The Four Month Notice issued by the Landlord dated November 27, 2018 is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant is entitled to deduct $100.00 form the next month's rent for recovery 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: February 25, 2019

Residential Tenancy Branch