



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the Residential Tenancy Act (the “Act”), to cancel Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, (the “Notice”) issued November 30, 2018, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 cause sufficient to terminate the tenancy for the reasons given on the Notice.

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

Issues to be Decided

- Should the Notice issued November 30, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee for their application?

Background and Evidence

The parties testified that the tenancy began in August 2013, as a one-year fixed term tenancy that rolled into a month to month at the end of the initial term. Rent in the amount of \$1,400.00 is to be paid by the first day of each month. The Tenant testified that they paid a \$625.00 security deposit and a \$625.00 pet damage deposit.

Both parties agreed that the Tenants were served with the Notice to end tenancy dated November 30, 2018, by leaving it in the mail slot for the rental unit. The reason checked off by the Landlord within the Notice was as follows:

- *Convert the rental unit for use by caretaker, manger or superintendent.*

The Landlord testified that he had issued the notice with the main goal of replacing the current Tenants with new renters that would occupy the rental unit with agricultural business.

The Tenants are requesting to cancel the Notice as the Notice was not issued in accordance with the *Act*.

Analysis

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

The Tenant's application called into question whether the Landlord had issued the Notice for an allowable reason under the *Act*. Section 49(6) of the *Act* details the reason in which a Landlord may issue a 4-month Notice to end tenancy:

Landlord's notice: landlord's use of property

49 (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.

I accept the testimony of the Landlord that his intent in ending this tenancy was to enter into a new rental agreement with someone else. I find that the Landlord did not issue the Notice for an allowable reason under the *Act*.

Therefore, I grant the Tenants' application to cancel the Notice dated November 30, 2018, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application. The Tenants are allowed to take a one-time deduction of \$100.00, from his next month's rent.

Conclusion

The Tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00, from their next month's rent.

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 8, 2019

Residential Tenancy Branch