



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

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

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "Four Month Notice") pursuant to section 49.

The tenant, the tenant's advocate EH, and the landlord attended the hearing. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Both parties acknowledged receipt of each other's evidence and neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The landlord issued and personally served the Four Month Notice on January 26, 2019. The tenant acknowledged service of the notice. I find that the tenant was properly served with the Four Month Notice on January 26, 2019 pursuant to section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's Four Month Notice pursuant to section 49 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The parties agreed that this tenancy started in December 2013. The monthly rent is currently \$650.00 and the landlord holds a \$300.00 security deposit.

The landlord testified that he issued the Four Month Notice to perform extensive renovations on the property. The landlord wants to replace all of the doors and windows on the property. In addition, the landlord wants to widen and upgrade the exterior walls on the property. The landlord testified that the walls currently have two-by-four wood framing without insulation. The landlord wants to replace the walls with two-by-six wood framing and add insulation. The landlord also wants to add drainage outside around the perimeter of the property. The landlord testified that the property needs to be vacant during the repairs because the proposed repairs are so extensive.

The landlord testified that he had not yet obtained any permits to perform the proposed renovations. The landlord acknowledged that an electrical permit would be required for electrical work which this project would likely require. The landlord testified that, if an electrical permit was needed, his contractor would obtain the electrical permit before construction started.

The tenant testified that he is a contractor and he is knowledgeable about construction. The tenant testified that an electrical permit would be required for this project. The tenant testified that, to widen the exterior walls by two inches as the landlord proposes, the landlord would need to remove existing electrical receptacles and extend the wiring to receptacles after the walls were replaced. The tenant testified that this requires the issuance of an electrical permit.

Analysis

A tenant may dispute a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit pursuant to section 49(8) of the *Act*. Pursuant to *Rules* 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Section 49(6)(b) of the *Act* permits a landlord to end a tenancy for renovations "...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."

Since the landlord has the onus of proof to establish the validity of the notice, the landlord has the burden of proving that he has obtained all necessary permits before issuing the notice. I am not satisfied that the landlord has done so. The landlord has admitted that he has not obtained any permits for the proposed renovation and he admitted that an electrical permit will likely be required. Furthermore, the tenant stated that he has construction expertise and an electrical permit would be required. Based upon the testimony of both parties, I am not satisfied that the landlord has obtained all necessary permits before issuing the notice as required by section 49(6)(b) of the *Act*.

Since the landlord has failed to satisfy the requirements of section 49(6)(b) of the *Act*, I grant the tenant's application to cancel the Four Month Notice pursuant to section 49(8) of the *Act*. The landlord's Four Month Notice is void and is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Conclusion

I grant the tenant's application to cancel the Four Month Notice pursuant to section 49(8) of the *Act*. The landlord's Four Month Notice is void and is of no force or effect. This tenancy shall continue until it ends pursuant to 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: March 20, 2019

Residential Tenancy Branch