



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Four Month Notice to End Tenancy for Landlord's Use of Property, dated December 27, 2018 ("Four Month Notice"). The Tenant also applied for more time to cancel the Four Month Notice, pursuant to section 66 of the *Act*.

The Tenant and the Landlord's agent, G.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses for the Tenant were also present and provided affirmed testimony.

During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

In her Application, the Tenant requested more time to apply to cancel the Four Month Notice. The Parties agreed that the Tenant was served with the Four Month Notice on December 28, 2018, with an effective end date to the tenancy being April 30, 2019. Under section 49(8)(b) of the *Act*, the Tenant had 30 days or until January 28, 2019 to dispute the Four Month Notice, which she did on January 24, 2019. As a result, she

applied for dispute resolution within the statutory timeframe, so she has no need for more time in this regard. I dismiss this request without leave to reapply.

Issue(s) to be Decided

- Should the Four Month Notice be cancelled or upheld, pursuant to the *Act*?

Background and Evidence

The Parties agreed that this tenancy began on June 1, 2014, with a rent of \$525.00 per month, which was due on the first of each month. The Parties agreed that the Tenant currently pays \$707.00 per month in rent. The Parties agreed that the Tenant paid the Landlord a security deposit of \$262.50 at the start of the tenancy.

The Parties agreed that the Agent served the Tenant with the Four Month Notice in person on December 28, 2018. The Agent said the owner intends to do a major conversion of the rental unit, which will involve repairs, upgrades and redecoration. The Agent said the owner wants to turn the rental unit into a studio, although the Agent said he was not sure if the intent was for it to be a residential unit or a space in which an artist could work.

The Agent said the renovations will include preparing all walls and ceilings for painting, and doing electrical upgrade and plumbing, as required. He said they will also upgrade the vestibule to allow safe access and to prevent water from entering the suite. The Agent said the 800 square foot rental unit space will be affected by this work, and that the work cannot safely be done without vacant possession. He said vacant possession is needed, because of the dust, flying debris, and the plumbing and power disconnection required for the duration of the upgrade.

The Tenant said there is no need to renovate the rental unit. The Agent agreed that the rental unit is functional, as it exists; however, he said the owner is also renovating it, because there is a geothermal room connected to this rental unit, to which they need access. The Agent said that the owner is aiming to get "geothermal" to all of the rental units. He said there are related pipes running into this rental unit, but that nothing is hooked up yet. The Agent said the project is underway and that they need to get into the Tenant's rental unit to pour a concrete floor in the geothermal room. The Agent said the contractor needs to get in to the unit to take a look and start planning the work that needs to be done. He said that work will begin as soon as the rental unit is vacant.

The Agent said that they did not obtain permits prior to serving the Four Month Notice on the Tenant, because they do not need permits for this work.

Analysis

Section 49(6) of the *Act* allows a landlord to issue a Four Month Notice to end a tenancy, if the landlord wishes to, among other things, perform renovations or repairs that are so extensive that the rental unit must be vacant. Section 49(6) states:

(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:

...

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

...

[emphasis added]

I find that the Agent gave internally inconsistent evidence about the stage at which the renovation project sits. This raises questions in my mind about the owner's compliance with section 49(6) of the *Act*. The Agent said they do not need permits for this project; however, he also said that there will be electrical and plumbing work done, and that the contractor needs access to the rental suite for "planning" purposes.

I find that it is more likely than not that permits are needed for electrical and plumbing work. Further, if the contractor is only in the planning phase of the project, I find it inconsistent that they would know what, if any, permits are needed yet.

I find the Agent provided insufficient and inconsistent evidence to support the claim that there are no permits needed for this renovation project. I, therefore, cancel the Four Month Notice, due to insufficient evidence, without leave to reapply. I order the tenancy to continue until ended in accordance with the *Act*.

Given that the Tenant was successful in this Application, I grant her the recovery of the \$100.00 filing fee.

Conclusion

I dismiss the Tenant's Application for more time to apply, without leave to reapply, as

the evidence indicates that more time was unnecessary.

The Four Month Notice is cancelled, due to insufficient and inconsistent evidence from the Agent. I order the tenancy to continue until ended in accordance with the *Act*.

I grant the Tenant a one-time rent reduction in the amount of \$100.00 in full satisfaction of the cost of the filing fee, pursuant to section 72 of the *Act*.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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 26, 2019

Residential Tenancy Branch