



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 was convened as a result of the Tenant's Application for Dispute Resolution, made on April 15, 2019, (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 March 8, 2019; and
- an order granting the return of the filing fee.

The Tenant as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord in person on April 15, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

The Landlord testified that he served the Tenant with his documentary evidence by registered mail on May 25, 2019. The Tenant confirmed receipt on May 27, 2019; however, the Tenant indicated that this was one day prior to the hearing and should not be admitted.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Residential Tenancy Branch Rules of Procedure 3.17 (the "Rule of Procedure"), the respondent's evidence must be received by the applicant and

the Residential Tenancy Branch not less than seven days before the hearing. Evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

As both parties agreed that the Landlord's evidence was served to the Tenant late, I find the Landlord's evidence will not be considered for the purpose of this hearing. As the Landlord attended the hearing, only the Landlord's oral testimony will be considered.

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.

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*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice dated March 8, 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 March 1, 2018. Currently, rent in the amount of \$1,200.00 is due to be paid to the Landlord on the first day of each month. Neither party submitted a copy of the Tenancy Agreement.

The Landlord testified that he served the Tenant with the Four Month Notice dated March 8, 2019 on April 4, 2019 by registered mail. The Four Month Notice has an effective vacancy date of July 31, 2019. I note that under the Act the effective date of the Notice is corrected to August 31, 2019. The Tenant confirmed having received the Four Month Notice on April 4, 2019. 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 Landlord testified that he served the Tenant with the Four Month Notice as his oldest daughter is expecting her second child and is wishing to move close to her parents for support. As such, the Landlord stated he is seeking to end the tenancy to allow for his daughter to occupy the rental unit. Furthermore, the Landlord stated that his daughter may wish to purchase the home.

In response, the Tenant stated that the Landlord served the Four Month Notice in bad faith and does not intend on completing renovations that require vacant possession. The Tenant stated that should the Landlord want to conduct renovations, she would be agreeable to accommodate the work taking place as she is rarely home and the tenancy would not need to end as a result.

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 by registered mail on April 4, 2019 with a corrected effective vacancy date of August 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 April 4, 2019 and filed her Application on April 15, 2019. Therefore, the Tenant is within the 30 day time limit under the *Act*.

I find that the Landlord in his own admissions stated that his intent behind serving the Tenant with the Four Month Notice was to gain vacant possession of the rental unit in

order to allow his daughter to move into the rental unit. While the Landlord may have sufficient cause to end the tenancy, I find that in this case, the Landlord has served the improper notice for that purpose.

As the Landlord has provided no evidence relating to his intent to perform renovations or repairs that are so extensive that the rental unit must be vacant, I cancel the Four Month Notice, dated March 8, 2019.

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

As the Tenant was successful in her Application, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that the Tenant deducted this amount from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The Four Month Notice issued by the Landlord dated March 8, 2019 is cancelled.

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

The Tenant is entitled to deduct \$100.00 from one (1) future rent payment 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: May 28, 2019

Residential Tenancy Branch