



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, RR

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice"), for a monetary order for compensation for damage or loss, and for an order reducing the monthly rent.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receipt of the other's documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural Matter

At the outset of the hearing, the parties confirmed that neither of them submitted a copy of the Notice. The parties were advised that I would proceed with the hearing on the basis that I would allow the tenant to send in a copy of the Notice after the hearing, but by the end of the day. The parties were in agreement of the contents of the Notice during the hearing. I advised the tenant to provide the Notice to the Residential

Tenancy Branch (the “RTB”) and a duplicate copy of that evidence to the landlords, who live upstairs from the tenant. I note that the tenant complied with those directions, and I have considered the Notice when making this Decision.

On a related matter, despite advising the parties that I would only accept the tenant’s submission regarding a copy of the Notice after the hearing, the landlords submitted additional late evidence, addressing an issue they had not raised at the hearing. The landlords contended that the tenant filed his application to dispute the Notice outside the allowed time frame, in this case, March 19, 2019. Despite this evidence being submitted late, out of an abundance of caution, I will address this matter under the Analysis portion of my Decision.

Preliminary Issue

I have determined that the portion of the tenant’s application dealing with a request for a monetary order and for a reduction in his monthly rent is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant’s Application and dismissed those portions, **with leave to reapply**.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the Notice?

Background and Evidence

I heard undisputed evidence that this tenancy began on May 5, 2017, that monthly rent is \$595.00, payable on the first day of each month, and that the tenant paid a security deposit of \$300.00.

The landlords live in the upper suite of the landlords’ home and the rental unit is in the lower suite.

Pursuant to section 7.18 of the Rules, the landlords proceeded first in the hearing to give evidence to support the Notice.

The undisputed evidence is that the Notice, dated February 15, 2019, was issued to the tenant on February 15, 2019, by leaving it with the tenant. The Notice listed a move-out date of May 31, 2019, and listed as reason that the landlords were going to “perform renovations or repairs that are so extensive that the rental unit must be vacant”.

Additionally, the landlords failed to complete the Notice by marking whether they had obtained all permits and approvals required by law to do this work or whether no permits and approvals are required by law to do this work. The landlord also wrote on the Notice that he would contact the local authorities to find out what permits are needed.

Landlords' evidence

Landlord WD provided the testimony for the landlords and stated that they required vacant possession of the rental unit in order to take up the flooring in the corner to ascertain where water in that portion of the rental unit is coming from. The landlord said it was necessary due to the complaints by the tenant about water and mould.

The landlords confirmed that they had not obtained any permits and approvals required by law to do the work.

The landlord confirmed that they had not had a contractor, municipal building inspector or other person attend the rental unit to inspect the problem area, as he, the landlord, intended on doing the work himself and due to the costs of an inspection. The landlord asserted that it was not necessary to obtain permits or approval required by law.

The landlord said he was denied access to the rental unit by the tenant, although he was allowed in two weeks prior.

Upon my inquiry, the landlord said he does not know how much drywall and flooring would be removed.

Tenant's response-

The tenant said that he only denied access to the landlords one time, as he was given a two minute notice. The tenant said he allowed the landlords entrance on other occasions.

The tenant said that the landlord cleaned inside of the cabinet where the mould was and that there is no current problem with mould and water.

The tenant denied that the entire flooring and drywall in his rental unit needed to be replaced or repaired.

Analysis

Based on the documentary and oral evidence and on the balance of probabilities, I find the following.

The landlords' Notice in this case was issued pursuant to section 49(6) of the Act, which provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord had all 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." Section 49(8)(b) provides that a tenant may dispute the Notice by making an application within 30 days of receiving it.

The undisputed evidence is that the tenant received the Notice on February 15, 2019, and therefore had until March 18, 2019, the next business day following the 30th day after receipt of the Notice to file his application.

In the case before me, after reviewing the RTB internal system, although the Notice of the Dispute Resolution Hearing was generated on March 20, 2019, I find the tenant filed his application for dispute resolution on March 15, 2019, which is within the allowable time frame.

Once the tenant made an application to dispute the 4 Month Notice within the allowable time period, the landlords became responsible to prove the notice to end tenancy is valid and enforceable.

In addressing whether or not the landlords established that they had all the necessary permits and approvals required by law, I find the undisputed evidence is that they did not. I additionally find that the landlords have not provided sufficient evidence to support their assertion that any proposed work on the rental unit would not require permits or approvals. The landlord confirmed that they have not had anyone inspect the rental unit to determine what work, if any, would be required to remediate water/mould issues. Additionally, despite what the landlords wrote in their Notice, they did not have a building inspector attend the rental unit to "see what permits are required". Therefore, I find that there was insufficient evidence by the landlords to show what was or was not required by law and therefore, they have not proven that the rental unit was required to be vacant.

A 4 Month Notice to end the tenancy is not effective earlier than four months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before

the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to June 30, 2019.

As a result, I find the landlords' 4 Month Notice to End Tenancy for Landlord's Use, issued and dated February 15, 2019, for a corrected effective end of tenancy date of June 30, 2019, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application is granted, as I have cancelled the landlord's 4 Month Notice, dated and issued on February 15, 2019, and the tenancy continues until it ends in accordance with 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: May 13, 2019

Residential Tenancy Branch