



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the Residential Tenancy Act (“Act”) by the tenant to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated March 30, 2019, (“4 Month Notice”), an order suspending or setting conditions on the landlord’s right to enter the rental unit, for an order requiring the landlord to comply with the Act, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and to recover the cost of the filing fee.

The tenant, the named landlord, and his brother and co-owner, EC, attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. I accepted EC as a landlord for the purposes of this tenancy and this application. The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, documentary and digital 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.

I note that during the hearing, the parties engaged in discussions around a settlement of the issues in this application; however, they were unable to reach a mutually satisfactory settlement. The hearing continued on the merits of the application and the 4 Month Notice.

Preliminary and Procedural Matter

I have determined that the portion of the tenant's application requesting an order suspending or setting conditions on the landlord's right to enter the rental unit, an order requiring the landlord to comply with the Act, and a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation is unrelated to the primary issue of disputing the 4 Month Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion, **with leave to reapply**.

The hearing proceeded only upon the tenant's application seeking cancellation of the 4 Month Notice and for recovery of the filing fee.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Should the 4 Month Notice be cancelled?
- If the 4 Month Notice is not cancelled, is the landlord entitled to an order of possession for the rental unit?
- Is the tenant entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties agreed that the tenancy began on or about April 1, 2017, for a monthly rent of \$1,800.00. A copy of the tenancy agreement was submitted in evidence.

The parties agreed that the landlord served the tenant with the 4 Month Notice dated March 30, 2019, via attaching the 4 Month Notice on the tenant's door. The tenant confirmed that she received the Notice on the same day. The tenant originally filed an application for dispute resolution seeking other remedies as listed above which have now been severed, and on April 25, 2019, she disputed the Notice by filing an amended application for dispute resolution. The effective vacancy date listed on the 4 Month Notice indicates July 31, 2019.

The parties agreed and the 4 Month Notice shows that the one reason listed was the landlord had obtained all permits and approvals required by landlord by law to perform renovations or repairs that are so extensive that the rental unit must be vacant. The landlord confirmed that he did not obtain any approvals or permits; rather, they stated they called a plumbing inspector with the municipality who informed them no permits or approvals were required. The landlord did not have any supporting documentary evidence such as a letter from the city to support his testimony.

The undisputed evidence was that the work to be performed involved concrete foundation removal and possible replacement of a water line in the concrete foundation.

The tenant disputes that the 4 Month Notice is valid and has requested that the 4 Month Notice be cancelled.

Analysis

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

There is no dispute that the 4 Month Notice was served on March 31, 2019. The tenant disputed the 4 Month Notice on April 25, 2019, which I find is within the 30 day timeline provided for under section 49(8)(b) of the Act to dispute a 4 Month Notice. When a tenant disputes a 4 Month Notice, the onus of proof reverts to the landlord to prove that the 4 Month Notice is valid and should be upheld. If the landlord fails to prove the 4 Month Notice is valid, the 4 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to support the notice to end tenancy, the notice to end tenancy will be cancelled.

Section 49(6) of the Act requires that the landlord obtain the necessary approvals or permits required by law prior to issuing the 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. In this case, the landlord confirmed that he did not obtain approvals or permits required by law, though he marked on the 4 Month Notice that he had in fact obtained them. Further, the landlord confirmed that he did not submit any documentary evidence to support that the landlord was advised that “no permits or approvals were required to do this work” listed on the 4 Month Notice to perform renovations or repairs that are so extensive that the rental unit must be vacant.

I therefore find the landlord provided insufficient evidence to support the 4 Month Notice due to his confirmation that had not obtained the necessary permits or approvals to perform the work. Additionally, I find the landlord failed to prove that no permits or approvals are required to renovate or repair the rental unit requiring the rental unit to be vacant. At the very least, I would expect something in writing from the city indicating that no permits are required and documented plans regarding the specific proposed work that would require the rental unit to be vacant. Instead, the landlord had no witnesses present, no building plans submitted, and nothing in writing submitted regarding building permit requirements. Therefore, I find the landlord has failed to meet the burden of proof and **I cancel** the 4 Month Notice. The 4 Month Notice is of no force or effect.

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

I allow the tenant recovery of her filing fee of \$100.00. I grant her a one-time rent reduction of \$100.00 from her next or a future month's rent payment in satisfaction of her monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenant has made this deduction of \$100.00.

Conclusion

The 4 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

As the tenant's application was successful, and pursuant to section 72 of the Act, the tenant has been granted a one-time rent reduction of \$100.00 from a future 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: May 15, 2019

Residential Tenancy Branch