



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 dealt with the tenants' 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 (Four Month Notice), pursuant to section 49 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with his son R.B. to assist him and his agent S.A. Tenant E.M. attended and confirmed that he was authorized to speak on behalf of both tenants named in this dispute.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and evidence. The tenant E.M. confirmed receipt of the landlord's evidence.

Based on the testimonies of the parties, I find that the documents for this hearing were served in accordance with the *Act*.

Preliminary Issue – Jurisdiction

At the outset of the hearing the parties confirmed that there had been two prior dispute resolution proceedings regarding the landlord issuing notices to end tenancy. One of

these decisions, rendered on January 31, 2019 (file number noted on cover sheet of this Decision) pertained to the same Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit as was issued in the current matter.

After the hearing, I reviewed the prior decision pertaining to the previously issued Four Month Notice and determined that the landlord's grounds for issuing the previous Four Month Notice dated December 26, 2018 and the current Four Month Notice dated May 17, 2019 were for the same purposes.

The May 17, 2019 Four Month Notice states that the tenancy is ending in order to "perform renovations or repairs that are so extensive that the rental unit must be vacant." The "Planned Work" section states, "DECONSTRUCTION & INSTALLATION" and the "Details of Work" section states, "REMOVE KITCHEN, BATHROOM, INSTALL ALL NEW, CABINETS, DOORS, FIXTURES, FLOORS, ETC". The Four Month Notice states that "No permits and approvals are required by law to do this work."

The December 26, 2018 Four Month Notice is described as follows by the arbitrator in the January 31, 2019 written decision:

Page 2 of the Four Month Notice indicates that the tenancy is ending because the landlord is going to "perform renovations or repairs that are so extensive that the rental unit must be vacant." The planned work and details of work section of the Four Month Notice includes the following information: "full kitchen & bathroom reno's new flooring/tiles new doors new paint new lighting fixtures new cabnets [sic], counter tops." It also indicates that "no permits and approvals are required by law to do this work."

In the January 31, 2019 decision, the arbitrator made the following findings:

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was based.

As such, the landlord's Four Month Notice, dated December 26, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

As such, I find that I have no jurisdiction to consider the merits of the landlord's Four Month Notice as a decision on the landlord's Four Notice Notice has been previously adjudicated, given that a previous proceeding before the Residential Tenancy Branch on January 31, 2019, related to the same rental, the same tenancy agreement in question, and for which a Four Notice Notice was issued for the same grounds, resulted in an arbitrator determining that the landlord was not entitled to an Order of Possession based on the grounds provided. Therefore, I must find that the tenants have succeeded in their application to dispute the Four Month Notice dated May 17, 2019 and the notice is cancelled and of no force or effect.

This tenancy will continue until ended in accordance with the *Act*.

As the tenants were successful in their Application, they may recover the \$100.00 cost of the filing fee from the landlord. The tenants are ordered to deduct \$100.00 from their monthly rent amount on one (1) occasion in full satisfaction of this monetary award.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Four Month Notice? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the cost of the filing fee?

Conclusion

The Four Month Notice dated May 17, 2019 is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the *Act*.

The tenants are ordered to deduct \$100.00 from their monthly rent on one occasion in satisfaction of their monetary award to recover the cost of the filing from the landlord.

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: July 19, 2019

Residential Tenancy Branch