



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUYHN HOLDINGS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit; and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord company and two of the three named tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The tenants have not provided the landlord with a copy of an audio recording that was provided as evidence for this hearing. Where a party intends to rely on evidence, it must be provided to the other party prior to the hearing. Since the audio has not been provided to the landlord, I decline to consider it. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit was given in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The landlord's agent testified that this tenancy began as a fixed term in January or February, 2018, which reverted to a month-to-month tenancy after the first year, and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 per month is

payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy, the landlord at that time collected a security deposit from the tenants, which the landlord's agent believes was \$800.00. A pet damage deposit was also collected, but the tenant who paid it moved out and the pet damage deposit was returned. The rental unit is a basement suite and the upper level is also tenanted. There is no written tenancy agreement.

The landlord's agent further testified that his mother personally served to one of the tenants a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit on April 22, 2019. A copy has been provided for this hearing by the tenants and it is dated April 22, 2019 and contains an effective date of vacancy of July 22, 2019. The reason for issuing it states:

- perform renovations or repairs that are so extensive that the rental unit must be vacant;
- I have obtained all permits and approvals required by law to do this work.

The planned work is "electrical," and the details of work portion states: "add smokes detectors wirings."

On April 23, 2019 the landlord's agent sent another notice, similar to the first, by registered mail, but it was returned unclaimed. The landlord's agent then personally served it to one of the tenants on June 1, 2019. A copy has been provided for this hearing by the tenants, and it is dated April 22, 2019 and contains an effective date of vacancy of July 22, 2019. The reason for issuing it states:

- perform renovations or repairs that are so extensive that the rental unit must be vacant;
- I have obtained all permits and approvals required by law to do this work.

The planned work is "electrical, plumbing" and the details of work portion states: "add smokes detectors wirings, and removal of basement kitchen unit including stove and hood vent, reverting house back to single family unit, removing washer and dryer."

The landlord's agent further testified that the second Notice was issued because the first one was missing information about removing the kitchen. Once the kitchen is removed, there will be no more basement suite, and the landlord needs to do that to satisfy City Hall. One of the tenants had called the City saying that the basement is a fire hazard. Then the City inspected it and told the landlord that it had to be reverted to a single unit, or bring it to code. The landlord doesn't have the money for that. The City posted a letter to the front of the rental house with a list of what the landlord needed to

do, and then sent one to the landlord by mail. A copy has not been provided as evidence for this hearing.

The first tenant (PC) testified that the day after the notice to end the tenancy was issued, the landlord completed work, such as installing smoke detectors, electrical panel, and all air ducts were cleaned out. The notice from City Hall said to do it within 2 weeks, and it was done immediately.

The tenant questions the landlord's good faith intent, and testified that the landlord had issued a notice to end the tenancy prior, which was cancelled at arbitration. There is a written tenancy agreement, and the landlord's agent attempted to evict the tenants saying that the tenancy ended when the fixed term expired, but the tenancy agreement specified that it reverted to a month-to-month tenancy. The Notice was cancelled. The landlord's agent simply doesn't like the tenants and doesn't like being the manager. His father was the landlord, but passed away about 6 months after the tenancy began.

The notice by City Hall gave the landlord 2 choices: within a month to remove the bars from windows, which the tenants did right away; and to install smoke detectors and update the wiring. The other option was to pay a fee and have a perfectly legal suite.

The second tenant (RC) testified that he does not believe the Notice was given by the landlord in good faith, but the landlord's agent just wants to get rid of the tenants. The tenant also believes that, since the upper unit was vacant for about 1 ½ months, then a family moved in, the landlord's agent offered to have the entire house rented to that family.

Photographs of the work done in the rental unit the day after the Notice to end the tenancy was given have been provided for this hearing.

Tenants' Submissions:

The tenants dispute that the landlord has acted in good faith, and wants to get rid of the tenants.

Landlord's Submissions:

The agent of the landlord company submits that his father passed away and the landlord's agent took on management, not by choice, and agrees that he does not like the tenants. The tenants record the landlord's agent without his knowledge and he is afraid to go to the rental unit and always takes another person with him for his safety, for fear the tenants will jump on him or attack him.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Further, in the case of a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit, the landlord must establish good faith intent, and must not have an ulterior motive for ending the tenancy.

In this case, the landlord agreed in his submissions that he does not like the tenants. He also submitted that he's afraid to go to the rental unit and always takes another person with him for his safety. I also cannot ignore the testimony that the landlord previously issued a notice to end the tenancy citing an expiration date of the tenancy agreement, yet testified that there is no written tenancy agreement.

The reasons for issuing the second Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit is to add smoke detectors and wiring, which has already been completed. The landlord testified that the kitchen needs to be removed to satisfy City Hall, but there is no evidence of that. There is no evidence to satisfy me that the rental unit needs to be vacant to make any repairs or renovations.

I also find, considering the testimony of the tenants and the submissions of the landlord's agent that the landlord has not acted in good faith and has an ulterior motive for ending the tenancy, and I cancel the Notice.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, both of the Four Month Notices to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit dated April 22, 2019 are hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: June 17, 2019

Residential Tenancy Branch