



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and Landlord were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the Four Month Notice be cancelled?

If the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy that were confirmed by the tenancy agreement submitted into evidence. The tenancy started on August 1, 2016. Rent in the amount of \$1,000.00 is due on the first day of each month. A security deposit of \$500.00 was paid at the start of the tenancy.

The Landlord testified that the Four Month Notice was served to the Tenant on or around May 13, 2019 by registered mail. A proof of service form was included in evidence and was signed by the Landlord confirming service by registered mail on May 13, 2019. The Tenant confirmed receipt of the Four Month Notice in mid-May 2019 but was unsure of the exact date. The Tenant applied to dispute the notice on June 9, 2019.

The Four Month Notice submitted into evidence by the Tenant was not signed. The Landlord did not have the notice in front of him so was unable to confirm whether he had signed the form. The Tenant confirmed that the copy he received and submitted as evidence did not include the Landlord's name or signature on the first page.

The Four Month Notice states the following as the reason for ending the tenancy:

- I am ending your tenancy because I am going to:
 - Perform renovations or repairs that are so extensive that the rental unit must be vacant
- No permits and approvals are required by law to do this work

The Landlord provided the following details on the Four Month Notice:

Full renovation & repair of all bedroom, study, bathroom, kitchen, sunroom, living room & fireplace. New textured ceilings all trim & doors replaced, electrical inspection & upgrades as required.

The Landlord provided testimony regarding his plans to complete extensive renovations on the rental unit. He submitted into evidence a schedule of the planned renovations which he stated include approximately 400 items to complete on the interior and exterior of the home.

The Landlord stated that he was in negotiations with the Tenant to purchase the property which did not work out for a variety of reasons. He stated that he inspected the rental unit in April 2019 and realized it was in poor condition. As such, he stated that he has decided to spend approximately \$50,000.00 on renovations prior to selling the home which he believes will increase the value of the property and maximize his investment.

The Landlord stated his plans to start the renovations in October and that the renovations are expected to take approximately 6 weeks. The Landlord submitted an undated construction contract which outlines the terms of the agreement for completion of the work.

The Landlord testified that the rental unit will need to be vacant during the renovations due to the dust and debris as well as the disruptions from ripping up floors and other areas of the rental unit. The Landlord stated that the demolition will occur at the start of the renovations, such as removing counters and the toilet, which will not be replaced until the finishing stages of the renovations.

The Landlord stated that there are no permits required for the work being completed.

The Tenant testified that the information provided by the Landlord is suspect, such as an undated and non-specific contract, a contractor from out of province, an exact estimate of \$50,000.00 and that no permits are required. The Tenant stated his position that the contract was written strategically to avoid the need for permits.

The Tenant also provided testimony about discussions with the Landlord to purchase the home. He also stated his belief that the Landlord will rent out the unit for a higher amount following the renovations. The Tenant noted that the home was renovated in 2013 and is very liveable and functional. The Tenant stated that no one has attended the rental unit to look at the unit and conduct measurements or other information for the renovation. The Landlord confirmed that the contractor has not been to the rental unit but has seen detailed photos of the property.

The Tenant agreed that the work will likely be disruptive but stated that he is willing to accommodate the renovations if needed, without the tenancy ending. The Tenant is familiar with the work planned due to his own employment and noted that if all 400 items

were completed it would be easier to have the home vacant to complete all of the renovations in an effective manner.

The Landlord stated his position that completing renovations will provide him with a higher return on his investment. He also noted that when he sells the property following the renovations, the new home owners are likely to want possession of the home anyway.

Analysis

As stated in Section 49(8)(b) of the *Act*, a tenant has 30 days to dispute a Four Month Notice. As the notice was served by registered mail on May 13, 2019, in accordance with Section 90 of the *Act* the notice is deemed served 5 days later. As the Tenant filed the Application for Dispute Resolution on June 9, 2019, I find that he applied within the allowable timeframe. Therefore, the matter before me is whether the Four Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove that the reasons for the notice are valid.

Section 49(6) of the *Act* states the following regarding ending a tenancy for renovations:

(6) 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 do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

In this matter, I find that the Landlord ended the tenancy pursuant to Section 49(6)(b) and therefore find that the Landlord must prove, on a balance of probabilities, that the rental unit must be vacant for the renovations to be completed.

As stated in Section 49(6), a landlord must also have all necessary permits and approvals required. *Residential Tenancy Policy Guideline 2* provides further clarification of the requirements for ending a tenancy for renovations and states the following when a landlord claims that no permits are required:

If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government.

While the Landlord claimed that no permits are required, there was no documentary evidence submitted that would support this claim.

Policy Guideline 2 further notes that there are three requirements to ending a tenancy for renovations or repairs:

- 1. The landlord must have the necessary permits;*
- 2. The landlord must intend, in good faith, to renovate the rental unit; and*
- 3. The renovations or repairs require the rental unit to be vacant.*

In order for the third requirement to be met:

- a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and*
- b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.*

This policy guideline further states that a landlord cannot end a tenancy for repairs or renovations just because it would be easier or quicker to complete the repairs if the unit were empty. In this matter, I am not satisfied that the tenancy needs to end for the renovations to take place. The Landlord testified that they would be completing the demolishing part of the renovations at the start such that the countertops, toilet and other necessities would be out of commission until the end of the repairs. However, I fail to find sufficient evidence to establish that this is the only way to complete the repairs and instead find that this would be done for ease of completing the repairs, not out of necessity.

Upon review of the schedule of planned repairs/renovations, it seems to be a renovation that does not involve extensive repairs such as to a plumbing or electrical system. Instead, I find that the repairs mostly seem to be cosmetic and therefore likely possible to complete with a tenancy in place, despite the renovations possible taking longer to complete. I also do not find sufficient evidence to confirm that the unit needs to be vacant, such as documentation from the contractor.

While the Tenant agreed that it was likely easier to complete the planned renovations with an empty property, I find that having tenants/occupants vacate a property temporarily is different than completely ending a tenancy. The Tenant also stated that he was willing to work around the planned renovations as needed, which I find can be done without ending the tenancy.

I also note that ending a tenancy due to future plans to sell the property is not a reason to end the tenancy under the *Act*. A rental unit can be sold with a tenancy in place and new owners may or may not have plans to move into the rental unit.

Accordingly, I do not find that the Landlord has met the burden of proof for me to be satisfied that no permits are required and that the only way to complete the renovations are with vacant possession of the rental unit. As such, I do not find that the Four Month Notice meets the requirements of Section 49(6) of the *Act* and I find that the notice is therefore not valid.

I also note that had the reasons for the Four Month Notice found to be valid, the Landlord would not be entitled to an Order of Possession due to not signing the Four Month Notice. Section 52 of the *Act* states the following:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) **be signed** and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement

made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

Regardless, I find that the Tenant's application to cancel the Four Month Notice was successful. The Four Month Notice dated May 13, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00. The Tenant may deduct \$100.00 from the next monthly rent payment as recovery of this fee.

Conclusion

The Four Month Notice dated May 13, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: August 02, 2019

Residential Tenancy Branch