



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC

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 an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) and/or tenancy agreement.

The Tenant was present for the teleconference hearing as was the Landlord and a family member of the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and approximately 42 pages of evidence from the Tenant. The Landlord submitted approximately 15 pages of evidence to the Residential Tenancy Branch on August 19, 2019, 3 days prior to the hearing. The Landlord stated that this evidence was also served to the Tenant on August 19, 2019 by putting the package in the Tenant’s mailbox. However, the Tenant stated that he did not receive any evidence from the Landlord.

As stated by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, evidence from the respondent must be received by the Residential Tenancy Branch and the applicant not less than 7 days prior to the hearing. As well as not having any evidence that the Tenant was served as required, I also find that the Landlord’s evidence was not served within the required timeline and therefore is not accepted. The parties were informed at the hearing that the Landlord’s evidence would not be considered, and this decision will be based on verbal testimony of both parties and the documentary evidence of the Tenant.

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.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

During the hearing the Tenant stated that he was seeking monetary compensation and referenced a Monetary Order Worksheet submitted in his evidence. However, the Application for Dispute Resolution did not include a monetary claim and I do not find that an amendment form was submitted to amend the application. As stated by rule 2.2 of the *Rules of Procedure*, a claim is limited to what is stated on the application. As such, the Tenant's monetary claim will not be considered. Both parties are at liberty to file a new application should there be any additional claims regarding this tenancy.

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 Landlord be ordered to comply with the *Act, Regulation* and/or tenancy agreement?

Background and Evidence

The Tenant testified that the tenancy began in 2012 and in August 2015 the current Landlord purchased the property. The Tenant stated that rent in the amount of \$1,250.00 is due on the first day of each month but that the Tenant current pays \$1,050.00 per month after a previous dispute resolution decision awarded a \$200.00 monthly rent reduction due to repairs not being completed. The Tenant submitted a copy of this decision dated August 29, 2016.

The Landlord stated that they purchased the property in August 2015 with the tenancy already in place. He stated that the Tenant is to pay \$1,250.00 per month in rent and that no reduction had been awarded.

Both parties agreed that rent is due on the first day of each month and that a security deposit of \$625.00 was paid at the start of the tenancy. The Tenant submitted a copy of the original tenancy agreement which confirms that start of the tenancy in June 2012 and that a security deposit of \$625.00 was paid.

The Landlord testified that a Four Month Notice was served to the Tenant in person on June 10, 2019. The Tenant confirmed receipt of the Four Month Notice on or around this date.

The Landlord stated that the notice was served due to their plans to demolish the rental unit and build a new home on the property.

A copy of the Four Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- I am ending your tenancy because I am going to:
 - Demolish the rental unit – I have obtained all permits and approvals required by law to do this work.

The Landlord stated that they have plans for the new home ready but are unable to obtain a demolition permit until the rental unit is empty. The Landlord also noted that the Tenant will not allow access to the rental unit. The Landlord stated that they will start the demolition as soon as the Tenant moves out.

The Landlord provided further testimony that they have been trying to get the Tenant to move out for 2 years but that he refuses to leave. They noted financial difficulties in paying the mortgage when the Tenant is paying less than market rent for living on such a large property.

The Tenant stated that he will move when legally required to do so. However, he stated his position that the Four Month Notice is not legal as the Landlord does not have the necessary permits which are required prior to serving the notice. The Tenant referenced an email submitted in his evidence. The email dated June 12, 2019 was from the city following an inquiry from the Tenant and states in part the following:

I can confirm that we have not received any applications for a demolition permit or tree cutting permits at (address of rental unit).

The Tenant stated that this supports his position that the permits were not obtained prior to serving him with the Four Month Notice. The Tenant testified that they have received multiple previous notices to end the tenancy stating that the Landlord has sold their home and will be moving into the rental unit. The Tenant submitted copies of previous arbitration decisions from previous hearings in which notices to end the tenancy were cancelled. The Tenant questioned the Landlord's credibility.

The Landlord stated that the Tenant had a fixed term tenancy agreement with the previous landlord that ended in May 2019 and that they agreed to let him stay an additional month through June 2019. However, he stated that they now need the Tenant to move so they can begin demolition and building a new home on the property.

The Tenant also applied for an Order for the Landlord to comply with the *Act, Regulation* and/or tenancy agreement. The Tenant stated that the Landlord advised him that he will be removing multiple trees from the property and also taking down the fence. The Tenant stated that a tree cutter attended the property and tagged the trees to be removed. The Tenant again referenced the email from the city dated July 12, 2019 stating that no permits were granted for removal of the trees. The Tenant also stated that the fence is part of the home and that there is no need for it to be removed. The Tenant stated that he would like the Landlord ordered to not remove the trees or the fence.

The Landlord stated that they looked at the trees to determine what trees can or cannot be removed, but do not have plans to remove all of the trees. They also stated that they have no plans to remove the fence. The Landlord stated that a landscape architect attended the property to assess the plans for the demolition and new home.

Analysis

The parties were in agreement that a Four Month Notice was served to the Tenant on or around June 10, 2019. I find that the notice was served pursuant to Section 49(6)(a) as follows:

- (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

Section 49(8)(b) of the *Act* states that a tenant has 30 days to dispute a Four Month Notice. As the Tenant filed the Application for Dispute Resolution on July 2, 2019, I find that he applied within the timeframe allowable under the *Act*. Therefore, the matter before me is whether the Four Month Notice is valid.

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

Section 49(6) states that a landlord must have the 'necessary permits and approvals required by law'. Although the Landlord testified that he is not able to receive a demolition permit until the rental unit is empty, I have no evidence before me that this is the case. As clarified in *Residential Tenancy Policy Guideline 2B*, the necessary permits and approvals must be in place prior to giving notice to the Tenant. I also do not find that plans for a new home, as testified to by the Landlord, are sufficient to establish that the required permits and approvals are in place and that the Landlord intends to do as stated on the Four Month Notice.

I find the email evidence from the city submitted by the Tenant to be compelling evidence that the Landlord does not have a demolition permit, although the Landlord also stated the same. *Policy Guideline 2B* further states the following:

If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.

In the absence of evidence from the Landlord that would establish that he is unable to obtain a demolition permit until the rental unit is empty, I do not find that the Landlord has met the requirements of Section 49(6) of the *Act*. Instead, I find that the Landlord does not have the necessary permits and approvals required and has not established that he does not need them or is unable to obtain them prior to the rental unit being empty.

Accordingly, I am not satisfied that the Landlord has met the burden of proof for me to determine that the Four Month Notice is valid. The Tenant's application to cancel the Four Month Notice is successful. The Four Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the Tenant's application for the Landlord to be ordered to not take down trees or the fence on the residential property, I do not find that any orders should be granted. The Landlord stated that they do not have plans to remove trees or the fence and I do not find sufficient evidence from the Tenant to establish his testimony that the Landlord is moving forward with these plans or that the Landlord is not in compliance with the *Act*, *Regulation* or tenancy agreement. For this claim, the onus is on the Tenant to prove the claim, on a balance of probabilities and I am not satisfied that the Tenant has done so.

I do note that both parties have an obligation to repair and maintain the rental unit pursuant to Section 32 of the *Act*. I do not find sufficient evidence before me to determine that the Landlord is not following the *Act* regarding the trees or fence and as I do not find that I have sufficient evidence of non-compliance, I decline to make any orders. Instead, I remind both parties to be aware of their rights and responsibilities under the *Act*. This portion of the Tenant's application is dismissed, without leave to reapply.

Conclusion

The Four Month Notice dated June 10, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement is dismissed, without leave to reapply.

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 22, 2019

Residential Tenancy Branch