Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 21, 2019 (the "Application"). The Tenants applied to dispute a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated July 29, 2019 (the "Notice"). The Tenant also sought to reduce rent for repairs, services or facilities agreed upon but not provided.

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing. The Landlord called two witnesses during the hearing.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant at the outset that I would consider the dispute of the Notice but not the request to reduce rent. This request is dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

I explained the hearing process to the parties who did not have questions when asked. The Tenant, Landlord and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that he did not receive the hearing package. I understood the Landlord to say he had been away and therefore did not receive the hearing package. He testified that he received the Tenants' evidence October 02, 2019. The Landlord did not take issue with proceeding because of service issues.

The Advocate advised that the Tenant received the Landlord's evidence October 04, 2019. The Advocate submitted that the evidence should be excluded due to the late service.

The Landlord confirmed he served his evidence on the Tenant October 04, 2019.

The Tenant testified that he had peaked at the Landlord's evidence but needed to sit down with the Advocate to discuss it. The Advocate advised that he did not have time to meet with the Tenant to go over the evidence because of the late service. He said he had not had a chance to look at the evidence.

The Landlord submitted that this is the second hearing on the same issue and the evidence submitted is the same as the evidence submitted for the first hearing. He also stated that the Advocate assisted the Tenant with the first hearing. The Landlord submitted that he did what he could once he received the Tenants' evidence.

Given the issue of service of the Landlord's evidence, I obtained further information about service of the hearing package and Tenants' evidence. The Advocate advised that the hearing package was sent by registered mail August 30, 2019 and the evidence was sent September 18, 2019.

The Tenants submitted the customer receipt for the hearing package with Tracking Number 1 on it. The Tenants also submitted the Canada Post website information showing the package was sent August 30, 2019 and notice cards were left September 04, 2019 and September 09, 2019. The website information shows the package was unclaimed and returned September 20, 2019.

The Tenants submitted a receipt for the evidence package with Tracking Number 2 on it. I looked this up on the Canada Post website which shows the package was sent September 18, 2019 and notice cards were left September 19, 2019 and September 25, 2019. The website shows the package was delivered and signed for October 02, 2019.

Policy Guideline 12 deals with service and the deeming provisions of the *Act* and states at page 12:

> Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where

> the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing…
>
> A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served. [emphasis added]

Based on the documentary evidence of service and Canada Post website information, I find the Tenants served the Landlord with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. I also find the Tenants complied with section 59(3) of the *Act* and rule 3.1 of the Rules in relation to timing of service of the hearing package. The Landlord submitted no evidence showing he was away and could not have picked the hearing package up prior to it being returned to the sender. I find the deeming provision in section 90(a) of the *Act* applies and the Landlord was deemed to have received the hearing package September 04, 2019, well before the hearing.

Rule 3.14 of the Rules requires an applicant to serve their evidence on the respondent so that the respondent receives it not less than 14 days before the hearing. For the same reasons as above, I find the Landlord was deemed to have received the evidence package September 23, 2019. The evidence was served in accordance with rule 3.14, although I do note that it should have been served earlier and not on the very last day permitted by the Rules.

I find the Tenants complied with the *Act* and Rules in relation to service of the hearing package and evidence. Therefore, service of these documents has no impact on what the Landlord was required to do in relation to service of his evidence.

Rule 3.15 of the Rules requires a respondent to serve their evidence on the applicants so that the applicants receive it not less than seven days before the hearing. Based on the agreement of the parties, I find the Landlord served his evidence on the Tenants October 04, 2019, only three days before the hearing. I find the Landlord did not comply with the Rules in relation to service.

Pursuant to rule 3.17 of the Rules, I exclude the Landlord's evidence. I accept the submissions of the Tenant and Advocate that they did not have time to fully review the evidence and discuss it prior to the hearing. I find it would be unfair and prejudicial to the Tenants to admit the evidence in the circumstances. I note that the exclusion of evidence does not impact my decision given the analysis below.

I note that the Landlord raised the possibility of an adjournment during the hearing. He indicated that this would give the Tenant and Advocate time to review his evidence and he could submit a piece of evidence that he thought he had included but neither the Tenant, Advocate or I had. I heard the Tenant and Advocate on this issue. I did not find that the parties were on the same page about an adjournment. I declined an adjournment given the parties did not agree on the issue and given the Landlord should have complied with the Rules and submitted all evidence prior to the hearing.

I proceeded with the hearing. The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started September 01, 2017 and is a month-to-month tenancy. Rent is $980.00 due on the first day of each month.

The Notice was submitted. The grounds for the Notice are 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 Landlord has indicated on the Notice that no permits or approvals are required by law to do the proposed work.

The parties agreed the Notice was served on the Tenant in person July 29, 2019.

The Landlord testified as follows. The rental unit is a two-floor unit in a fourplex. The roof drains were plugged last December which resulted in water pouring into the walls from the top of the building. He contacted his insurance company who hired a company to fix the issue. The building had to be vacated. He told the tenants they needed to move out. Tenants in two of the units vacated. The Tenants and tenants in another unit would not move out. The restoration company started work on the empty units and realised the extent of the damage. The damage is extensive. The Tenant was harassing workers of the restoration company and the company stopped work. The Landlord wants the Tenants out because he does not know the extent of the damage or how long repairs will take. The kitchens and bathrooms are going to be removed to get inside the walls. It is not safe for the Tenants to remain in the rental unit. Workers need full access to the rental unit Monday to Friday 9:00 a.m. to 5:00 p.m.

The Landlord testified that no permits are required for the proposed work because no structural changes are being made. He said they may require permits once they see the scope of the issues. The Landlord thought he had submitted an email from the city about this. This email was not submitted with the Landlord's evidence. The Tenant and Advocate advised that they did not have this email either.

The Landlord called the witnesses who testified about the scope of the damage and work to be done. Neither witness testified about permits or approvals.

The Advocate submitted as follows. The scope of the work is undetermined. There are no definitive reports saying the rental unit must be vacant. Witness L.D. is not qualified to speak to this issue. It may be more convenient or cost effective to have the rental unit vacant, but vacancy is not required in this case. The Landlord has not submitted any reports about the alleged damage.

The Tenant testified as follows. Demolition in the rental unit was started and left unattended for months. Drywall in the bathroom, bedrooms and halls has been removed. He was not aware of a leak and never saw water in the rental unit.

Analysis

The Notice was issued under section 49(6) of the *Act* which states:

> (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…
>
> > (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
>
> [emphasis added]

Pursuant to section 49(8)(b) of the *Act*, the Tenants had 30 days to dispute the Notice. There is no issue the Tenant received the Notice July 29, 2019. The Tenants filed the Application August 21, 2019, within the 30-day time limit.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice.

Policy Guideline 2B states at page one and two:

> When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals…
>
> **If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.**
>
> [emphasis added]

I note that the prior decision on File Number 1 between these parties outlined Policy Guideline 2 which stated as follows:

> When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that

> are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.
> …
>
> **If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government. Local governments may have information about when permits or approvals are required on their website.**
>
> [emphasis added]

I am not satisfied based on the Landlord's testimony alone that no permits or approvals are required for the proposed work. Particularly given the alleged extent of the damage and scope of the proposed work. The Landlord did not submit documentary evidence showing he does not require permits or approvals and did not provide this evidence through witnesses. The Landlord said he had an email from the city about this; however, this was not submitted and the Landlord's evidence was excluded. In the circumstances, I am not satisfied permits or approvals are not required.

I am not satisfied the Landlord has proven the grounds for the Notice. I therefore cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 08, 2019

Residential Tenancy Branch