



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on September 5, 2019 wherein the Tenants sought to cancel an undated 2 Month Notice to End Tenancy for Landlord's (the "2 Month Notice"). By amendment, the Tenants also sought to cancel a 4 Month Notice to End Tenancy issued on September 9, 2019 (the "4 Month Notice").

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on October 29, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Should the 2 Month Notice be cancelled?
2. Should the 4 month Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

A copy of the residential tenancy agreement was provided in evidence and which indicated the monthly rent was \$1,500.00. The agreement was not dated, however in written submissions by the Tenants they indicate the tenancy began January 2018. In his testimony before me the Landlord confirmed this was correct.

The Landlord stated that the rental unit is a single-family dwelling home which sits on 10,500 square feet, or a ¼ acre. The tenancy agreement provided that rent was below market value due to the condition of the rental unit and further noted the Landlord's intention to demolish the unit.

In written submissions, the Tenants submit that the property was listed for sale. The Landlord testified that the rental property was listed for sale in June of 2019 as a “fishing expedition” to see if there was any interest. The Landlord confirmed that the property continues to be listed for sale although they have had no offers.

The Landlord issued the 2 Month Notice on a RTB form dating from March 1999. Since that time, the *Residential Tenancy Act* has changed such that a Landlord cannot issue a 2 month notice for demolition; rather, the Landlord must issue a 4 month notice. The Landlord testified that he was now aware that they could not issue a 2 month notice for demolition purposes.

On September 9, 2019 the Landlord issued the 4 Month Notice. The effective date on the 4 Month Notice was December 31, 2019. The Landlord confirmed that he was now aware that the effective date of the Notice should have been January 31, 2020.

The Landlord indicated on the 4 Month Notice that “work cannot be done to obtain permits until the property is vacant”. The Landlord further claimed that the project has been approved but they are not able to obtain a demolition permit until the services are cut off and they can’t do that until the property is vacant. The Landlord failed to provide any documentary evidence to support his testimony that a demolition permit cannot be issued until the property is vacant.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. Section 49 of the *Act* allows a landlord to regain possession of their rental unit in certain circumstances.

In the case before me, the Landlord issued a 2 Month Notice on an outdated form (from March 1999). As discussed during the hearing, a 2 Month Notice is not valid in circumstances where the landlord intends to demolish the rental unit, as in such cases four months’ notice must be given. **I therefore cancel the 2 Month Notice.**

Section 49(6)(a) allows a landlord to end a tenancy when the landlord intends to demolish the rental unit and reads 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;
...

Guidance can also be found in *Residential Tenancy Branch Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use* which provides in part as follows:

B. PERMITS AND APPROVALS REQUIRED BY LAW

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.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit.

The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice.

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.

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.

As noted above, the Landlord must have all necessary permits and approvals required by law *prior to issuing* the 4 Month Notice. In the case before me the Landlord did not submit proof of any permits, plans, or approvals regarding the demolition. Although the Landlord testified that such permits and approvals were not required, he also did not provide me with any documentary evidence from the municipality in which the rental property was located, or a confirmation from a certified tradesperson, to support such claims. I therefore find the Landlord has provided insufficient evidence to support a finding that permits and approvals are *not* required by law.

The evidence confirms that the Landlord has listed the rental property for sale. A landlord may not end a tenancy to facilitate a sale, unless all conditions of sale have been removed and the purchaser has requested vacant possession of the rental unit as they intend in good faith to occupy the unit (section 49(5) of the *Residential Tenancy Act*). I agree with the Tenants that the listing of the property also calls into question whether the Landlord truly intends to demolish the unit.

In all the circumstances I find the Landlord has failed to meet the burden of proving the tenancy must end for the reasons cited in the 4 Month Notice. **I therefore also grant the Tenants’ request to cancel the 4 Month Notice.**

Conclusion

The Tenants' request for an order cancelling the 2 Month Notice and the 4 Month Notice is granted. The tenancy shall continue until ended in accordance with the *Residential Tenancy 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 *Residential Tenancy Act*.

Dated: October 30, 2019

Residential Tenancy Branch