



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENDICOTTLIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), pursuant to section 49;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant and landlord T.B. (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution via registered mail on October 27, 2019. The landlord confirmed receipt of the tenant's application for dispute resolution on October 30, 2019. I find that the landlord was served in accordance with section 89 of the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Four Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claim to

warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Four Month Notice. I exercise my discretion to dismiss the tenant's claim to reduce rent for repairs with leave to reapply.

Issue to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice, pursuant to section 49 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified that he moved into the subject rental property in August of 1995. The landlord testified that he did not know when the tenant moved in but did have a tenancy agreement going back to 2006. Both parties agree that monthly rent in the amount of \$717.50 is payable on the first day of each month and that the tenant paid a security deposit in the amount of \$272.50.

The landlord testified that the Four Month Notice with an effective date of January 31, 2020 was posted on the tenant's door on September 28, 2019. The tenant confirmed receipt of the Four Month Notice on September 28, 2019.

The Four Month Notice states that the landlord is ending the tenancy because the landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant.

The Four Month Notice states that no permits and approvals are required by law to do this work.

The Four Month Notice states that the following work is planned by the landlord:

- Full gut and reno on unit

The Four Month Notice provides the following details of work:

- New cabinets [sic] kitchen
- New flooring
- New toilets + flooring
- New bathtub and tiles
- New windows + patio [sic] windows
- All repainted walls
- New kitchen sinks
- New fridge + stoves
- New overhead fans

The landlord testified that the entire subject rental building which contains 43 suites is being renovated. The landlord testified that the renovations are extreme and the units will all be uninhabitable while they are being renovated. The landlord testified that it will take over one year to renovate all of the units in the subject rental building. I asked the landlord how long it would take to complete the renovations in the tenant's suite, the landlord testified that he did not have a time estimate for one suite.

The landlord testified that he did not check with the city to determine if permits were required for the above work. The landlord testified that he assumed the construction company hired to do the renovation work would have done so. The landlord testified that he did not know if the construction company checked with the city to determine if permits were required to complete the work.

The tenant testified that he does not believe that vacant possession is required to complete the work as the landlord could complete one room at a time. The tenant testified that no permits for the renovation work have been posted in the building or provided to himself.

The landlord testified that the tenant's rental property would need to be vacant to complete the work because the suite would have no plumbing during the renovation.

Analysis

Section 49(6)(b) of the *Act* states that 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Policy Guideline 2 states that if a permit or approval is not required from the local government, a landlord should obtain written proof from the local government.

The landlord testified that he did not check with the city to determine if permits were required and he provided no evidence that the construction company employed to complete the renovation checked with the city. The landlord also failed to enter into evidence written proof from the local government that permits for the planned renovations are not required.

I find that the landlord has failed to prove, on a balance of probabilities, that permits are not required for the proposed renovations at the subject rental property, contrary to section 49(6)(b) of the *Act*. I therefore find that the Four Month Notice is cancelled, and that the landlord is not entitled to an Order of Possession for Demolition, Renovation, Repair or Conversion of Rental Unit. This tenancy will continue in accordance with the *Act*.

Conclusion

The Four Month Notice is cancelled and of no force or effect.

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: November 21, 2019

Residential Tenancy Branch