



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

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

- cancel a Four Month Notice for Landlord Use of property for Demolition, Renovation or conversion to another use pursuant to section 49 of the *Act*; and
- application for filing fee to be repaid pursuant to section 72 of the *Act*.

Both parties attended the hearing. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I confirmed there were no issues with service of the tenant's application for dispute resolution and evidence. I find that the landlord was duly served with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the Cancellation of the landlord's Four Month Notice to End Tenancy for Landlord Use of property for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "Notice") pursuant to section 49;

Is the tenant entitled to the filing fee under section 72 of the *Act*?

Background and Evidence

The landlord issued the Notice on October 21, 2019. The tenant testified that the Notice was posted on her door on the same day it was issued. The Notice had a stated move-out date of February 21, 2020. The grounds stated for ending the tenancy were the following:

- Performing renovations or repairs that are so extensive that the rental unit must be vacant.

The Notice did not indicate the number of weeks or months that the rental unit was required to be vacant. The parties entered into a written tenancy agreement starting April 16, 2018 on fixed term tenancy, reverting to month to month. Monthly rent is \$750.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$375.00 at the commencement of the tenancy.

The landlord testified that he served the Notice, as he intends to renovate the plumbing, electrical, subfloors and walls in the rental unit which are required to be opened to incorporate the plumbing and rewiring in order to comply with a city notice.

The landlord testified and submitted into evidence a copy of the municipality's compliance notice dated October 25, 2019. The landlord testified that the repairs were so extensive that the tenant was required to move out as contractors will carry out major work and renovations on the rental unit. The landlord confirms that he does not have the permits in place to commence the renovations.

The tenant testified that he was willing to temporarily vacate the rental unit and move out his belongings whilst the renovations and repairs took place. The parties were in agreement that once renovations had been undertaken, the tenant would have the right of first refusal and could move back into the rental unit.

Analysis.

Section 49(6) of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy 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.

When ending a tenancy under section 49(6) of the *Act*, 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 the extent and nature of work that objectively requires vacancy of the rental unit.

I find that the landlord has issued the Notice prematurely. 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 is issued.

For these reasons, I find that the landlord has failed to provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenant's application to cancel the Notice. The Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application to cancel the Notice. The Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in his application, he is entitled to recover the filing fee paid for the application. In accordance with section 72 of the *Act*, the tenant may deduct \$100.00 from January 2020 rent payment due to the landlord.

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: December 18, 2019

Residential Tenancy Branch