



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation or Conversion to another Use.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 22, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The Tenant said the tenancy started in April 2013 as a verbal month to month tenancy. Rent is \$1,500.00 per month payable on the last day of each month. The Tenant said she paid a security deposit of \$725.00 at the start of the tenancy. The parties were unsure if a condition inspection report was completed at the start of the tenancy.

The Landlord said she served the Tenant with a 4 Month Notice to End Tenancy dated October 29, 2019 in person to a person over 18 years of age at the rental unit on October 29, 2019. The Tenant said the Notice to End tenancy was left in the mail slot.

The Landlord continued to say they are selling the property and the purchasers are requesting renovation to the unit be completed so the sale can close on February 28, 2020. The Landlord said the effective vacancy date on the 4 Month Notice to End Tenancy is March 1, 2020 and the purchaser has agreed to close the sale on March 1, 2020 with vacant possession. Consequently, the Landlord issued the 4 Month Notice to End Tenancy so that the sale can complete.

The Landlord submitted an application for a permit to do the renovation, but there was no evidence that the permits have been approved. Further the Landlord has not submitted any evidence from the municipality that permits for the renovation work are not needed. The Landlord and the Landlord's witness G.J. (the realtor for the purchaser) insisted that they have done what is required to issue a 4 Month Notice to End Tenancy. The Landlord requested that the tenancy end so the sale can go through.

The Tenant said that she has been in hospital for the last three months but she is home now and she wants to continue the tenancy. The Tenant continued to say that the renovations are for upgrading the bathroom and kitchen and putting new flooring. The Tenant said all of the work can be done while she is

living in the unit. The Tenant said there are two bathrooms and she is willing to put up with the renovations while she lives in the unit.

The Landlord said the renovations are extensive enough that the unit has to be vacated to complete the work. The Landlord added that the renovations may take up to 4 to 5 months and it would be impossible to complete the work with the Tenant living in the unit.

The Tenant said in closing this has been her home for 6 years and she has put a lot of work into it, so she does not want to move. The Tenant requested that the Notice to End Tenancy be cancelled so the tenancy can continue.

The Landlord said in closing the rental unit needs renovations and the sale of the property requires vacant possession. The Landlord said they have applied for a permit to do the renovations which should be proof that the 4 Month Notice to End Tenancy for Renovation is valid. The Landlord requested the tenancy end on the effective vacancy date of March 1, 2020.

Analysis

Section 49 (6) of the Act says:

(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;
- (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.

Page two of the 4 Month Notice to End Tenancy says:

2. PERMITS AND APPROVALS REQUIRED BY LAW

Your landlord has to have **all permits and approvals that are required by law in place before they give you this notice.** 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. Strata corporations may also require certain permits and approvals before a rental unit can be renovated or repaired or converted to a non-residential use and there may be strata bylaws that prohibit the rental unit from being used for a non-residential purpose.

Policy Guideline 2 B says:

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. Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these

requirements. Additionally, strata corporations may require certain permits and approvals before a rental unit can be renovated or repaired or converted to a non-residential use and there may be strata bylaws that prohibit the rental unit from being used for a non-residential purpose. If a strata bylaw requires the landlord to obtain permission before renovating the rental unit, the landlord must have that permission in place before giving notice. If a bylaw prohibits the landlord from using the rental unit for a non-residential purpose, the bylaw would need to be changed or the rental unit exempted from the bylaw before giving notice.

The Landlord has submitted a copy of an acknowledgement of an application for a permit which states that it is not an approval for the work to be done and is not a permit. As well the acknowledgement of the application does not have a description of the renovations to be completed. With no corroborative evidence to prove the Landlord has the approved permit in place for the renovation work or that a permit is not required by the authority the Landlord has not complied with the Act, the 4 Month Notice to End Tenancy and Policy Guideline 2 B.

Consequently I cancel the 4 Month Notice to End Tenancy for Renovations dated October 29, 2019 and I order the tenancy to continue as agreed.

As the Tenant has been successful in this matter I order the Tenant to reduce the rent payment by \$100.00 from \$1,500.00 to \$1,400.00 for the month of February 2020, so that the Tenant can recover the filing fee for this application.

Conclusion

The 4 Month Notice to End Tenancy for Renovations dated October 29, 2019 is cancelled and the tenancy is ordered to continue as agreed.

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*.

Date January 13, 2020

Residential Tenancy Branch