



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 28, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, dated October 31, 2019 (the "Four Month Notice"); and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

The Tenants testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on December 7, 2019. A Canada Post registered mail receipt was submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five (5) days later. I find the Notice of Dispute Resolution Hearing package is deemed to have been received by the Landlord on December 12, 2019.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenants in person. The Tenants acknowledged receipt on January 18, 2020 and advised they have had sufficient opportunity to review and consider it. Pursuant to section 71 of the *Act* I find the Landlord's documentary evidence was sufficiently served for the purposes of the *Act*.

No issues were raised with respect to service and receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure and to which I was referred; however, I refer to only the relevant facts and issues in this Decision.

Issues

1. Are the Tenants entitled to an order cancelling the Four Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on October 16, 2016. The parties agreed that rent in the amount of \$1,300.00 per month is due on the first day of each month. The parties also agreed that the Landlord holds a security deposit in the amount of \$600.00 and a pet damage deposit in the amount of \$125.00.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the Four Month Notice, which was uploaded to the Service Portal by both parties following the hearing. The Tenants acknowledge receipt of the Four Month Notice on October 31, 2019. The Four Month Notice was issued on the basis that the Landlord intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The Four Month Notice indicates that these areas will be “unusable for any domestic purpose for 4 to 5 weeks.”

The Four Month Notice indicates that the Landlord intends to upgrade and renovate the kitchen, laundry rooms and hallway, and install new windows on the lower floor. During the hearing, the Landlord confirmed that the windows will no longer be replaced. In addition, the Landlord testified that contractors have advised they require vacant possession of the rental unit to complete the work.

In addition, the Landlord testified that contractors have inspected the rental property and advised that no permits are required for the proposed work. He referred to email correspondence from M.M., a representative of the building department of the regional district, dated January 8, 2020. In it, M.M. discusses a proposed wall removal and states that a building permit would be required if a wall to be removed is load bearing. In a letter to the Tenants dated January 15, 2020, the Landlord advised that he and his contractor determined that the wall to be removed was not load bearing and that no permits were required. No permits or other correspondence from the contractor or local authorities were submitted into evidence by the Landlord.

In reply, the Tenants relied on section 49(6)(b) of the *Act* which confirms that the Landlord was obligated to have all required permits or approvals when the Four Month Notice was issued. The Tenants indicated the Landlord did not have permits for the window replacements at the time the Four Month Notice was issued (which has since been removed from the scope of work). The Tenants also noted the Landlord did not provide documentary evidence to confirm that permits are not required for the proposed work and suggested it is likely that removal of electrical outlets or asbestos remediation would likely require permits.

The Tenants also raised the issue of good faith. Referring to “newsletters” from the Landlord, the Tenants testified the Landlord has recently indicated that he intends to sell the property and that it would be easier to do so if the unit was vacant. Copies of these documents were submitted into evidence. The Landlord did not dispute that he intends to sell the rental property after the renovations are complete.

The Landlord testified he is doing the best he can and acknowledged that issues may arise that require permits.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6)(b) of the *Act* confirms 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.

The above provision requires a landlord to have all permits and approvals in place at the time the notice to end tenancy is issued. In this case, the Landlord testified that a contractor inspected the rental property and confirmed that no permits are required to perform the intended work. However, Policy Guideline #2B confirms:

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.

[Reproduced as written.]

The language in Policy Guideline #2B is mandatory. However, while the Landlord testified that no permits or approvals are required, he did not provide evidence to confirm that permits are not required, and that vacant possession is necessary.

Considering the above, I find that the Four Month Notice is cancelled and is of no force or effect. The Landlord has not provided sufficient evidence to support his claim that permits are not required for the proposed work. I also note the Landlord's acknowledgement that permits were required to replace windows and that the appropriate permits had not been obtained *at the time* the Four Month Notice was issued. Therefore, I find the tenancy will continue until otherwise ended in accordance with the *Act*.

In light of my findings above it has not been necessary to provide an analysis with respect to the issue of good faith.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from a future rent payment at the Tenants' discretion.

Conclusion

The Four Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise 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 *Residential Tenancy Act*.

Dated: January 24, 2020

Residential Tenancy Branch