



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, OLC, FFT**

Introduction

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

- Cancellation of a 4-Month Notice to End Tenancy for Demolition, Renovation or Conversion pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application and evidence by posting on the door of the landlord's address for service on or about April 10, 2020. Based on the evidence of the tenant I find that the landlord is deemed served with the tenant's materials on April 13, 2020, three days after posting in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenant gave undisputed evidence on the following facts. The tenant has been residing in the rental unit for approximately 15 years. The rental property is a detached house. The monthly rent is \$1,357.00 payable on the first of each month. Adjacent to the rental property is a barn which is currently used by another occupant. Electricity for both the rental property and the barn is currently under the tenant's account.

The tenant was sent by text message a photograph of one page of an unsigned 4 Month Notice dated February 25, 2020 from the landlord. The tenant filed their present application to dispute the notice though they have never been issued a proper 4 Month Notice.

The tenant submits that the landlord has allowed the current occupant of the barn adjacent to the rental property to freely use the tenant's utilities and do work on the common property such as the driveway without notice to the tenant. The tenant also submits that the landlord has appeared on the rental property without notice and has attempted to access the rental unit without notice or authorization.

Analysis

Section 52 of the *Act* provides that:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form

The copy of the notice to end tenancy received by the tenant and submitted into evidence consists of a photograph of a single unsigned page. Based on the evidence before me, I find that the notice does not conform to the requirements of section 52 and therefore is ineffective. Accordingly, I allow the tenant's application to dispute the notice pursuant to section 49 of the *Act*. The notice is of no force or effect and this tenancy continues until ended in accordance with the *Act*.

I accept the evidence of the tenant that there is no agreement that they are responsible for payment of any utilities other than their own. I further accept the evidence that the landlord has allowed for individuals to access the rental property and use the electrical system of the tenant without authorization. I also accept the evidence that the landlord has attempted to access and enter the rental property without notice or authorization.

I find it appropriate to order that the landlord abide by section 8(1) of the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 which provides that:

Despite section 29 (1) (b) of the Residential Tenancy Act and sections 11 (2) (a) and (3) of the Schedule to the Residential Tenancy Regulation, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.

I also order that in the absence of a proper agreement with the tenant the landlord is prohibited from allowing others to access or utilize the tenant's utilities. Any further use of the tenant's utility accounts may give rise to a basis for a monetary award in the tenant's favour.

As the tenant was successful in their application they may recover the filing fee from the landlord.

Conclusion

The 4 Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

The landlord is ordered to comply with the terms of the Act and *Ministerial Order M089* and refrain from entering the rental unit.

The landlord is ordered to cease using or allowing others to use the tenant's utilities.

I issue a monetary order in the tenant's favour in the amount of \$100.00. The landlord must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 15, 2020

Residential Tenancy Branch