



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 was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a Four Months' Notice to End Tenancy For Demolition Renovation, Repair or Conversion of a Rental Unit, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and make submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenants applied to amend the Application for Dispute Resolution respecting the spelling of the landlord's name and address of the rental unit. The landlord's agent did not oppose the amendment, and the frontal page of this Decision sets out the amended Style of Cause.

Issue(s) to be Decided

Has the landlord established that the Four Months' Notice to End Tenancy For Demolition Renovation, Repair or Conversion of a Rental Unit was issued in accordance with the *Residential Tenancy Act*, specifically with respect to permits required by law?

Background and Evidence

The landlord's agent is the son of the landlord, and testified that the tenants were renting the rental home at the time that the landlord purchased it in or about February, 2016. The parties entered into a month-to-month tenancy effective April 1, 2016 for rent

in the amount of \$1,600.00 payable on the 1st day of each month. A new tenancy agreement was signed by the parties for a fixed term tenancy to begin July 1, 2017 and to expire on August 30, 2018 for rent in the amount of \$1,800.00 payable on the 1st day of each month. Rent is now \$1,850.00 per month, there are no rental arrears, and the tenants still reside in the rental unit. The rental unit is a single family dwelling and copies of the tenancy agreements have been provided as evidence for this hearing. The landlord currently holds a security deposit in the amount of \$800.00 as well as a pet damage deposit in the amount of \$800.00.

The landlord's agent further testified that on June 26, 2020 the tenants were served with a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit (the Notice) by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated June 25, 2020 and contains an effective date of vacancy of October 31, 2020. The reason for issuing it states that the landlord is ending the tenancy because the landlord is going to demolish the rental unit. It also states that no permits and approvals are required by law to do this work. The planned work is "Asbestos Removal," and states that asbestos removal is required prior to demolition; that no permit is required; and is not possible while the unit is occupied. The landlord's agent testified that the demolition permit cannot be issued until hazardous testing is completed for asbestos or other toxic materials. The testing team will take out drywall, tile flooring and outside vinyl, taking about 30 samples, which is scheduled for November 2, 2020. An example of the Demolition Application has been provided for this hearing to show that the hazardous assessment is required, and permits cannot be issued until the assessment is done. This is a 1960's house, and any homes built prior to the early 1990's has to be tested. The rental home is on a big lot, and the landlord wants to make it into 2 lots, and has approval by the City. A sign was erected on the property by the City since November, 2019.

The first tenant (RH) testified that more time is needed to be able to afford to move out of the rental unit.

The tenant also called WCB a few weeks ago who advised that as long as there's a Heppa filter on the vacuum and masks are worn, it would be safe for the home to be occupied. They would use a spray to ensure that no fibers fly around during the testing.

The second tenant (MH) testified that on July 3, 2020 the landlord gave notice to enter for July 8, 2020 at 8:00 a.m. for asbestos testing to determine which areas required remediation in the future. The testing had to be rescheduled due to the COVID-19 pandemic because the tenant had an infection around her heart from a new pacemaker. The tenants are still waiting for it to be rescheduled.

The tenants called the company that was to do the testing, and they also stated that the testing could be done without vacating the rental unit. They would be testing small areas and that could be done in a safe manner.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the Four Months' Notice to End Tenancy For Demolition Renovation, Repair or Conversion of a Rental Unit, and I find that it is in the approved form.

The *Residential Tenancy Act* states:

49 (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;

In this case, the landlord's agent testified that the rental unit must be vacant in order to complete testing prior to obtaining demolition permits. However, the tenants dispute that, and I am not satisfied that such testing requires the rental unit to be vacant. More importantly, the law states that all necessary permits are required prior to issuing a notice to end the tenancy. The landlord has no such permits, and I find that the Notice was issued prematurely. Therefore, I cancel it and the tenancy continues.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing the order in the Provincial Court of British Columbia, Small Claims Division for enforcement.

Conclusion

For the reasons set out above, the Four Months' Notice to End Tenancy For Demolition Renovation, Repair or Conversion of a Rental Unit dated June 25, 2020 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants in the amount of \$100.00 as recovery of the filing fee, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: August 10, 2020

Residential Tenancy Branch