



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on July 23, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Renovations (the "Four Month Notice") dated June 26, 2020.

The Tenants as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by the Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Four Month Notice dated June 26, 2020, pursuant to Section 49 of the *Act*?
2. If the Tenants are not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 1989. Currently, the Tenants pay rent in the amount of \$1,945.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 which the Landlord continues to hold.

The Landlord stated she served the Tenants in person with the Four Month Notice on June 26, 2020, with an effective vacancy date of November 30, 2020. The Tenants confirmed having received the Four Month Notice on June 26, 2020. The Landlord's reason for ending the tenancy on the Four Month Notice is to;

“perform renovations or repairs that are so extensive that the rental unit must be vacant.”

The Landlord has also indicated on the Four Month Notice that she has obtained all permits and approvals required by law to do this work. A copy of the Four month notice as well as a copy of the permits were provided by the Landlord in support.

The Landlord stated that she bought the rental property last year with the intent to completely renovate the rental property. The Landlord stated that the scope of the renovations taking place at the rental property includes; redoing all the plumbing, upgrading the electrical system. Replace the heating system, completely renovate each room in the home including washroom and kitchen areas, cabinets, sinks and fixtures. The Landlord intends on installing a gas line and has provided a copy of permits as well as quotes from the contractors detailing the work that will be taking place at the rental property. The Landlord stated that the work will commence as soon as she obtains vacant possession of the rental unit.

In response, the Tenants stated that they feel as though the Landlord has served the Four Month Notice in bad faith. The Tenants stated that the Landlord is seeking to re-rent the rental unit at a higher price and will not complete the repairs she has outlined. The Tenants stated they are unable to look for other accommodations during the pandemic as they suffer from health issues.

Analysis

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

Section 49(6) of the *Act* states that 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 Landlord served the Tenant in person with the Four Month Notice on June 26, 2020, with an effective vacancy date of November 30, 2020. The Tenants confirmed having received the notice on the same date. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8)(b) of the Act, a Tenant may dispute the Four Month Notice by making an application for dispute resolution within 30 days after the date the Tenant receives the notice. The Tenant received the Four Month Notice on June 26, 2020 and filed their Application on July 23, 2020. As such, I find that the Tenants disputed within the 30 day time limit under the Act.

According to the Residential Tenancy Policy Guideline #2 (the "Policy Guidelines"); there are three requirements to end a tenancy for renovations or repairs:

1. The landlord must have the necessary permits;
2. The landlord must intend, in good faith, to renovate the rental unit; and
3. The renovations or repairs require the rental unit to be vacant.

In order for the third requirement to be met:

- a) the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and
- b) the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

In this case, I find that the Landlord has provided sufficient evidence to support that the scope of the renovation proposed by the Landlord is significant and it is more likely than not that the Landlord requires vacant possession of the rental unit to perform the renovations. Furthermore, I find that the Landlord has obtained the required permits to complete to renovations. On a balance of probabilities, I find that it is more likely than not that the Landlord has issued the Notice in good faith. The Landlord and the Tenants should be aware that if the Landlord fails to follow through on the intended purpose stated on the Four Month Notice, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

In light of the above, I dismiss the Tenants' Application to Cancel the Four Month Notice dated June 26, 2020 without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Four Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession according to the effective vacancy date on the Four Month Notice, November 30, 2020 after service on the Tenants pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants' Application seeking cancellation of the Four Month Notice dated June 26, 2020 is dismissed without leave to reapply. The Landlord is granted an order of possession effective at 1:00 P.M. on November 30, 2020 after service on the Tenants. The order should be served to the Tenants as soon as possible and may be filed in the Supreme 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: August 28, 2020

Residential Tenancy Branch