



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the Four Month Notice).

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a 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 section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, two advocates for the Tenant (the Advocates) and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. The Agent for the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of each other's documentary evidence. As a result, the hearing proceeded as scheduled and I accepted all of the documentary evidence before me from both parties for consideration in this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Four Month Notice?

If the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The Tenant testified that they received the Four Month Notice off their door on June 26, 2020.

The Four Month Notice in the documentary evidence before me is in writing on the approved form, signed and dated June 25, 2020, has an effective date of October 31, 2020 and states that the notice to end tenancy has been served as the Landlord intends in good faith to demolish the rental unit. Beside the ground selected for demolishing the rental unit is a handwritten note that states "Decommission Suite". On the Four Month Notice the Landlord checked the box indicating that they have all the permits and approvals required by law to demolish the rental unit and noted the electrical permit issued May 13, 2020, to remove the range and hood vent.

During the hearing the Agent for the Landlord testified that the Landlord intends to "decommission the suite" by removing the range and vent hood so that it may be turned back into living space for the Landlord and or/themselves, as they are a close family member of the Landlord and will be the owner of the rental unit effective January 4, 2021. In support of this testimony the Landlord submitted a two page electrical permit from the city in which the rental unit is located issued May 13, 2020, stating that the Landlord intends to remove a range and hood vent for the purpose of decommissioning the rental unit. Although the Agent for the Landlord stated that they are planning to demolish the rental unit by removing items such as the range and vent hood and doing renovations and repairs that necessitate vacant possession, no additional documentary evidence or permits were submitted for my review or consideration, such as a demolition permit.

The Tenant and their Advocates submitted substantial documentary evidence and written submissions in relation to the lack of validity of the Four Month Notice and the

lengthy dispute history between the parties in relation to repairs and the Landlord's unsuccessful attempts to end the tenancy over the last year and a half.

Analysis

Based on the affirmed testimony of the Tenant and the documentary evidence before me, I find that the Tenant was served with the Four Month Notice on June 26, 2020, the date they state that they received it off their door.

Section 49 (6) (a) 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 demolish the rental unit.

Although the ground selected on the Four Month Notice for ending the tenancy was demolition of the rental unit, the Landlord only provided a permit showing that they plan to remove a range and vent hood from the rental unit. Although the Agent for the Landlord argued in the hearing that the work they plan to do in the rental unit, such as mold remediation and the removal of the range and vent hood constitute demolition of the rental unit, I do not agree. No permits for demolition of the rental unit were submitted and it was clear to me from the testimony of the Agent in the hearing and the electrical permit submitted, that the rental unit will not be demolished. Instead, the Agent's testimony focussed on their position that the rental unit needs to be vacant so that it may be renovated and repaired and then converted from a rental unit back into living space for the Landlord and/or their close family members.

Based on the above, I therefore order that the Four Month Notice is cancelled as I am not satisfied that the Landlord intends in good faith to demolish the rental unit, which is the stated ground for ending the tenancy on the Four Month Notice, or that they have the permits and approvals required by law to demolish it. I therefore order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Having made the above finding, I find it important to note that since March of 2019 there have been nine Applications for Dispute Resolution filed by the parties in relation to this tenancy with the Residential Tenancy Branch (the Branch), including this Application and an Application for Dispute Resolution which has not yet been decided. Seven of the previous Applications related to the Landlord's attempt to end the tenancy, all of which were unsuccessful for various reasons, including but not limited to failure to satisfy an Arbitrator that there were valid grounds for ending the tenancy pursuant to sections 47,

49, and 56 of the Act, findings of bad faith on the part of the Landlord, and failure to properly serve a notice to end tenancy. The Application for Dispute Resolution which has not yet been decided also relates to notices to end tenancy served by the Landlord or their agents under sections 47 and 49 of the Act.

The Agent for the Landlord was therefore cautioned in the hearing that if the Landlord or their agents continue to serve notices to end tenancy without proper grounds to do so under the Act or to serve notices to end tenancy in bad faith, Applications made by the Landlord seeking an end to the tenancy may be dismissed on the basis that they are frivolous and/or an abuse of the dispute resolution process pursuant to section 64 (2) (c) of the Act. The Landlord is also cautioned that failure to comply with the Act, regulations, or any decisions and orders from the Branch may result in administrative penalties of up to \$5,000.00 per day pursuant to section 87.4 of the Act.

Although a previous finding has been made by the Branch that the Landlord served a notice to end tenancy in bad faith, both parties should be aware that this does not mean that all subsequent notices to end tenancy served by the Landlord or their agents will also be found to have been issued in bad faith.

Conclusion

I order that the Four Month Notice dated June 25, 2020, is cancelled and that the tenancy continue in full force and effect until it is ended by one of the parties 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: August 31, 2020

Residential Tenancy Branch