



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, LRE

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (Notice), issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant, her legal advocate and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant's only evidence was a copy of the Notice. The landlord confirmed not providing any documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and 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). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. I find that the second claim on the application is not sufficiently related to the primary issue of whether this tenancy will end or continue. I will, therefore, only consider the tenant's request to cancel the Four Months' Notice. The tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed, with leave to re-apply.

This portion of the tenants' claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

- Has the landlord submitted sufficient evidence to support the Four Months' Notice or should it be cancelled?

Background and Evidence

The tenant was unsure of the start date of the tenancy and the landlord said the tenancy began on May 28, 2013. The monthly rent at the start of the tenancy was \$645 and the current monthly rent is \$700.

The rental unit is in the basement of a home owned and occupied by the landlord in the upper level.

The undisputed evidence is that the landlord served the tenant with the Notice on August 5, 2020, by personal service, and the Notice listed a move-out or end-of-tenancy date of December 5, 2020.

The tenant filed her application to dispute the Notice on or about August 27, 2020.

On the Notice, the landlord listed that she was ending the tenancy because she was going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The landlord indicated the rental unit must be vacant for two months. The landlord also stated on the Notice that no permits or approvals are required by law to do this work.

On the Notice, the landlord is required to state the planned work. Here, the landlord wrote that she intended to replace the bathroom floor due to water damage and to replace damaged carpet.

When asked to provide the details of the work, on the Notice, the landlord wrote “can not do this while tenant is there”.

The landlord testified that before the tenant moved into the rental unit in 2013, there was a leak in the basement suite. The landlord said that there is now another leak, which means that seven years later, the problem was not fixed. The landlord said that she would probably need to go into the closet and remove the walls. The landlord said that there is a bad stain on the carpet and it may have to be replaced. The landlord said they may have to get a plumber in and would probably have to go into the bedroom and remove things.

Analysis

Based on the documentary and oral evidence and on the balance of probabilities, I find the following.

The landlord’s Notice in this case was issued pursuant to section 49(6)(b) of the Act, which provides “a landlord may end a tenancy in respect of a rental unit if the landlord had all 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.” Section 49(8)(b) provides that a tenant may dispute the Notice by making an application within 30 days of receiving it.

The undisputed evidence is that the tenant received the Notice on August 5, 2020, and filed her application on August 27, 2020, which is within the allowable time frame.

Once the tenant made an application to dispute the Four Months’ Notice within the allowable time period, the landlord became responsible to prove the Notice is valid and enforceable.

In this case, the landlord provided no details of the work planned on the Notice as required, other than a statement the work could not be done if the tenant was still there. I find therefore, the landlord failed to provide sufficient details on its face to support her Notice.

Additionally, the landlord was vague in her answers as to why the rental unit was required to be vacant. The landlord used the term “probably” and “may” repeatedly, with no firm or clear answer to any of my questions about what work would be done. I therefore find the landlord failed to convince me that any work would be done on the rental unit.

I do not find a possible carpet replacement requires the tenant to vacate the rental unit for two months. The landlord provided no evidence that the floor would be replaced or even if it was, why the work would take two months.

Section 49(6) of the Act requires that the landlord obtain the necessary approvals or permits required by law prior to issuing the Four Months Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. In this case, the landlord did not submit any documentary evidence to support that “no permits or approvals were required to do this work” listed on the Four Months’ Notice to perform renovations or repairs that are so extensive that the rental unit must be vacant.

At the very least, I would expect something in writing from the city indicating that no permits are required and documented plans regarding the specific proposed work that would require the rental unit to be vacant. Instead, the landlord had no witnesses present, no building plans submitted, and nothing in writing submitted regarding building permit requirements.

For the above reasons, I therefore find the landlord has failed to meet the burden of proof and **I cancel** the Four Months’ Notice. The Four Months’ Notice is of no force or effect.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Four Months’ Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until 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: October 9, 2020

Residential Tenancy Branch