



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 Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on December 18, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on or around September 11, 2020. The Notice indicates the landlord is ending the tenancy because she *“is going to perform renovations or repairs that are so extensive that the rental unit must be vacant.”* Under the following portion of the Notice, the Landlord failed to complete the section showing what permits she had, and what date the permits were issued. The Landlord also did not indicate that the work did not require permits.

On the bottom part of the Notice, the Landlord indicated she was going to put in new flooring in all areas, new plumbing supply lines, new cabinets, new countertops, new dishwasher, new gutter, and some minor electrical work.

During the hearing, the Landlord explained that she also wants to open up a wall in the kitchen, and replace and repair the structure, as it appears to be settling and sagging. This work was not outlined on the Notice, but the Landlord feels it cannot be done with the Tenant still living in the unit. The Landlord stated that the kitchen wall is “extensively” damaged. However, no photos were provided to highlight this issue. The Landlord stated that given the age of the house, they have to completely replace flooring, water lines, some electrical, cabinets, counters, lights, and some appliances. The Landlord feels this work could easily take a couple months.

The Landlord clarified in the hearing that she did not have any permits in place at the time she issued the Notice to the Tenant. The Landlord confirmed that she went to apply for a plumbing permit sometime in October 2020. The Tenant confirmed she called the city and they stated the permit was issued on November 3, 2020.

The Tenant is concerned that this notice has been issued in bad faith because she brought up the need for a few repairs, and now the Landlord is wanting to end the tenancy. The Tenant feels the Landlord is trying to evict her to renovate for higher rent.

The Tenant pointed out that the Landlord failed to properly issue the Notice, indicate how long the renovation would take, and also failed to lay out all aspects of the renovation. The Tenant noted that all of the items on the actual Notice do not require

vacant possession. The Tenant also feels the Landlord is fabricating the issue with the wall to bolster her need for the unit to be vacant to do the renovations.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to perform the stated purpose on the Notice.

I find the tenant was duly served with the Notice on September 11, 2020. The Notice was served pursuant to section 49(6) of the *Act* which reads:

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;
- b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;**
- c) convert the residential property to strata lots under the Strata Property Act;
- d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
- e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- f) convert the rental unit to a non-residential use.

Residential Tenancy Policy Guideline # 2b - Ending a Tenancy to Demolish, Renovate, or Convert a Rental unit to a Permitted Use, states as follows:

B. PERMITS AND APPROVALS REQUIRED BY LAW

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the

rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

Having reviewed the totality of this situation, I find the Landlord was required to have her permits and approvals in place prior to issuing the Notice. The Landlord appears to have waited nearly 2 months after issuing the Notice before she obtained her plumbing permit. Policy Guideline 2b clearly lays out that the permits must be in place before the Notice is issued, and if no permits are required, then the Landlord should demonstrate that this has been verified with the local municipality. In any event, I find the Landlord failed to follow the guidelines prior to issuing the Notice. I also note the Notice issued by the Landlord does not list all aspects of the work, including the removal of a kitchen wall (which the Landlord relied heavily upon in the hearing as a basis for needing vacant possession). The Notice also fails to lay out the permits required for the renovation.

I hereby cancel the Notice, issued September 11, 2020, as the Landlord has failed to ensure the Notice was compliant with section 52 of the Act (properly completed), as well as the fact that the Landlord did not have the permits in place before issuing the Notice. I find it important to note the Landlord did not provide any explanation as to why it would have been unreasonable for her to get all necessary permits in place prior to issuing the Notice.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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: December 18, 2020

Residential Tenancy Branch