



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, CNL-4M, OLC

The tenants (hereinafter the “tenant”) filed an Application for Dispute Resolution on October 27, 2020 seeking an order to cancel the ‘Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use’ (the “Four-Month Notice”). They also applied for the landlord’s compliance with their request for repairs, as well as the landlord’s compliance with the legislation and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 13, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed receipt of the other’s prepared evidence in advance of the hearing. The landlord confirmed their receipt of three packages from the tenant, including that received two days in advance of the hearing. Based on these statements of confirmation from both parties, I proceeded with the hearing.

Preliminary Matters

At the outset of the hearing, I confirmed with the parties that the immediate issue was that of the Four-Month Notice issued by the landlord on September 29, 2020. This is with a move-out date, as indicated by the landlord, of January 31, 2021. Given the urgency to have this matter resolved, I informed the parties that this was the focus of the hearing. Rules 2.3 and 6.2 of the *Residential Tenancy Branch Rules of Procedure* set out guidelines on related issues within an application and the arbitrator’s authority to decline portions of an Application.

For the issues concerning repairs, and the landlord’s compliance with the Act, the regulations, and/or the tenancy agreement, I decline hearing these portions of the

tenant's Application. The tenant has leave to reply on these discrete points. The issues for my consideration in this hearing are set out below.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the Four Month Notice pursuant to section 49 of the *Act*?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the current tenancy agreement, signed by the parties on February 1, 2018. This was a new agreement between the parties, after the tenancy started in 2005. It shows at the time of signing the rent was \$1,025 per month; however, by the time of the Four-Month Notice being issued, the rent was \$1,128.

The tenant provided a copy of the Four-Month Notice issued by the landlord on September 29, 2020. The document provides the move-out date of January 31, 2021. The document indicates the landlord gave this document to the tenant in person on the same date of its issuance. The document on page 2 gives the indication that the reason for ending the tenancy is to "Perform renovations or repairs that are so extensive that the rental unit must be vacant." In the hearing, the landlord stated that they need the unit empty for 2 months, to complete "almost everything" for a complete renovation. The landlord provided a list of planned work with details for bathroom, kitchen, and more general work.

In the hearing, the landlord presented that they previously renovated two other units within the 4-plex building where the tenant resides. They had offered the renovated units to the other tenants who vacated those same units for the two-month project cycle. They provided they are doing the same offer for the tenant here. They provided testimony on their discussions of the upcoming work with the tenant. The landlord

provided they offered the newly renovated basement suite for the tenant's use during the interim period during the renovation and offered assistance with the costs of the necessary move.

The landlord provided that they possessed the proper necessary permit to perform the work, as obtained from the municipality. This is the plumbing permit, as indicated on the Four-Month Notice. They provided a copy of the permit in the evidence, along with the contract they have with a plumbing and heating firm. With this being a renovation project, it "does not need a building permit" because of the work they will undertake here. There is no extension, no adding of a room or garage, or undertaking to put a base on something.

The landlord also spoke to their knowledge of construction projects and building, with their prior work experience. This was in direct response to the tenant's questioning the landlord's ability to do their own renovations to other units in the 4-plex building, raising safety concerns of the work performed.

On this issue of ending the tenancy, the tenant focused on the work performed in prior units. They questioned the need to move walls within the unit. On their own initiative, they queried the municipality on the need for permits, and based on their reportage to the city, they were told that permits need to be in place. They were told the unit needs to be vacant because of the walls coming down -- this requires a permit.

the tenant also queried the municipality on the validity of the plumbing permit presented by the landlord. According to the tenant, the city advised that it is not valid, and is expired. The "plumbing permit needs to be extended."

On the landlord's offer of a temporary move to the basement unit, the tenant presented that this would entail an increase in rent. Further, should they choose to move back into their own renovated unit, this also would mean an increase in rent paid. The possibility of a move elsewhere is not an option for them, due to the added expenses.

Analysis

When a landlord issues a Four Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason for ending the

tenancy. Additionally, the landlord bears the burden of showing they are acting in good faith.

In this case, the Four Month Notice was issued pursuant to section 49(6), and I accept the tenant's evidence that they received this document on September 29, 2020. As the tenant's application was filed on October 27, 2020, I find that they have disputed the Notice within the timeframe required under the *Act*.

Section 49(6) of the *Act*, requiring a Four Month Notice, stipulates:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant here raised particular focus on the landlord's need for necessary permits and approvals. These are particular permits that are required by law before the landlord can issue the tenant notice. Because the tenant has disputed the notice, the landlord is required to provide evidence of the required permits or approvals.

The landlord provided a plumbing permit from the municipality. It was issued, as indicated on the form itself, on February 11, 2020. The tenant provided evidence that the work on the basement unit commenced in that same timeframe in February 2020. The tenant also provided that the City advised a permit of this type needs to be extended.

The landlord confirmed this, where they provided a note from the previous basement tenant that provides the work began after they received a notice to end tenancy "at the end of February." In the hearing, the landlord provided that they had previously renovated 2 other units of the 4-plex building, and that it took two months for completion of each. The landlord explained how they made the offer of the newly-renovated basement unit the tenant here. They described how the permit was issued in February 2020, that was "not only for this unit" but for the move of a sink from one unit to another.

The landlord also provided a copy of the contract they have in place with a plumbing and heating company. I find this contract sets the task for "including permit" as the responsibility of the contractor, and as yet not completed. There is also a pending "inspection from [municipality]." I conclude the requisite permit for plumbing or other

work in the upper unit was not in place at the time the contract was signed. There is no other evidence from the landlord to show that permits were in place prior to issuing the Four-Month Notice.

Additionally, there is no copy of a permit that is issued on “21/08/2020” as indicated by the landlord on the Four-Month Notice. The only permit provided is that of February 11, 2020. I find this is incorrect information as provided on the Four-Month Notice by the landlord.

From these pieces of evidence, I find the landlord did not obtain a separate plumbing permit for this separate upper-level unit. The landlord stated this permit was “not only for this unit”; however, there is no evidence to show a single permit carries on, in perpetuity, applicable to other projects. The permit, as indicated, pre-dates the proposed work on this tenant’s unit by one year, with the contract showing project work commencing in February 2021.

Neither party provided a copy of bylaw information from the municipality to show which work requires permits. The landlord provided that this is a “general renovation” and “does not need a building permit.” The permits necessary, as they stated in the hearing, concern a situation where you are going to extend something, “putting a base on something”, for example adding a room or adding a garage.

Bearing the burden of proof so as to show the work is legitimate as stated on the Four-Month Notice, I find if permits are *not* required for the work involved, the landlord’s statement of this on its own is not sufficient evidence. This is based more on their own knowledge of building; however, the landlord did not provide confirmation of the bylaw. I understand the landlord has a prior work history with building and is even aware of the need for a bylaw. Those statements do carry weight with respect to project knowledge; however, the requirement here is for the landlord to show they have all necessary permits and approvals. If not needed, proof must be provided, in line with showing that vacancy of the unit is required.

As an adjunct to this, the form itself calls for detail: “If you are ending this tenancy for renovations. . .explain why the renovations or repairs require the rental unit to be vacant.” The document bears no detail on the need for vacancy.

In conclusion, I find the landlord has not met the burden of proof to establish that they had all necessary permits and approvals in place that are required by law before giving the tenant notice. The landlord has not met the burden of proof to show that proper

permits for all work involved are not needed. Additionally, I find the copy of the plumbing permit they did provide is expired.

In the alternative, I find that permit is not extended to the current project when it was issued several months prior. On my evaluation, I find the documentation does not show that to be the case.

For these reasons, I order that the Four-Month Notice issued by the landlord is cancelled.

Conclusion

For the reasons above, I order that the Four-Month Notice issued on September 29, 2020 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: January 14, 2021

Residential Tenancy Branch