



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNL-4M**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for regular repairs pursuant to sections 32 and 62; and
- An order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit pursuant to section 49 and 55.

The landlord attended the hearing and was assisted by his wife, NB. The tenant attended the hearing on his own behalf. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings and stated he had no issues with timely service of documents. Both parties were prepared to have the merits of the tenant's application heard.

Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's four month notice to end tenancy was unrelated to the tenant's other issue and dismissed the issue of repairs with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit be upheld or cancelled?

Background and Evidence

The tenant gave the following testimony. The tenancy began on May 1, 2014 with rent set at \$700.00 per month. Rent is currently set at \$750.00 per month. No written

tenancy agreement as signed by the parties; no security deposit was collected by the landlord and no condition inspection report was done at the commencement of the tenancy.

The tenant testified that when he moved in, the previous tenant had “trashed” the unit, leaving garbage inside and everywhere. When the landlord first rented the unit to the tenant, the landlord never set foot inside. Throughout the 7 years the tenant has been living there, the landlord has never come in. The tenant questions why the landlord suddenly wants to ‘kick him out’ to renovate it, given that the landlord has not come to inspect it throughout the tenancy. He has asked the landlord repeatedly to fix things such as the roof and the overhead electrical wires but the landlord has done nothing to assist.

The tenant testified that he was personally served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit by the landlord on November 4, 2020. A copy of the notice was provided as evidence by the tenant. The notice states the landlord is ending the tenancy because he is going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The landlord did not indicate how many anticipated weeks or months the unit is required to be vacant on the form.

The planned work described is structural renovations and electrical work. Under “details of work” the landlord states: *reconstruction, plumbing, electrical and other work required to get the house up to better living conditions.*

Lastly, the landlord indicated that ***No permits and approvals are required by law to do this work.***

The landlord called his wife, NB to testify. The witness testified that the rental unit requires extensive renovations. The house is very old, maybe 80 or 90 years old and there is a lot of work that needs to be done. For example the house needs a new roof, and the plumbing and house electrical wiring needs work. She doesn’t think the plumbing work requires a permit and that they will obtain a permit to do the electrical work once the roof, plumbing and walls are done.

The landlord testified that due to the pandemic, nobody will come to provide a work order or a scope of work estimate. The landlord does not have any documents from a municipal or provincial authority authorizing the work at this time. This won’t happen until somebody comes to see inside the property.

Analysis

Based on the tenant's undisputed testimony, I am satisfied he was personally served with the landlord's Four Month Notice to End Tenancy on November 4, 2020. He filed an Application for Dispute Resolution to dispute the notice on December 1, 2020. The application was filed within 30 days after the tenant received the notice in accordance with section 49(8) of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that when a tenant applies to cancel a notice to end tenancy, the landlord must prove the reason they wish to end the tenancy.

The landlord served the notice to end tenancy to renovate or repair the rental unit in a manner that requires the rental unit to be vacant pursuant to section 49(6)(b) of the *Act*. Section 49(6) also states that the landlord may end the tenancy if the landlord has all the necessary permits and approvals required by law.

The issues of permits and approvals are discussed in Residential Tenancy Branch policy guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use].

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.

"Permits and approvals required by law" can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose.

...

If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.

The landlord did not call a certified tradesperson to confirm that permits were not required for the “extensive renovations” the landlord wished to do to the rental unit. Nor did they provide any written documentation to corroborate the landlord’s assertion that permits were not required. Further, the landlord did not provide any evidence of a building bylaw to indicate permits to do the intended work was not required or that the work would require the unit to be vacant.

Pursuant to section 49(6), the landlord is required to have these permits and approvals that are required by law in place before serving the tenant with a Four Month Notice to End Tenancy. I find the landlord has provided insufficient evidence to satisfy me that the scope of the work planned for the rental unit does not require the permits and approvals. For this reason, I cancel the landlord’s Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit. This tenancy will continue in accordance with the *Act*.

Conclusion

The Four Month Notice to End Tenancy is cancelled and of no further force or effect.

The tenant’s application seeking repairs is dismissed with leave to reapply.

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: February 23, 2021

Residential Tenancy Branch