



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL-4M, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Four Month Notice to End the Tenancy for Demolition, dated January 29, 2021 ("Four Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenant, S.B., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and the documentary evidence from the Tenants and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or to the Tenants.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the Four Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2017, with the previous owner of the property; however, the Landlord advised that he had purchased the property in December 2020, and received the first rent payment from the Tenants in January 2021. The Parties agreed that the Tenants were and continue to be up to date in their rent payments. They agreed that the Tenants paid the Landlord a monthly rent of \$2,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,300.00, and no pet damage deposit. The current Landlord confirmed that he received the security deposit from the previous landlord and that he now holds it for the tenancy.

The Landlord had served the Tenants with a Four Month Notice that was signed and dated January 29, 2021; it has the rental unit address; it was served in person on January 30, 2021; and it has an effective vacancy date of May 31, 2021. The Landlord confirmed that he intends to demolish the rental unit in due course, which is why he served the Four Month Notice.

The Parties advised that they agree about the need to cancel the Four Month Notice, as the Landlord still does not have a demolition permit yet. They indicated that they were both planning or in the process of building new houses, and that they will revisit the need for an eviction notice in due course. They said they wanted to go through dispute resolution to ensure that they follow the correct process for dealing with the situation.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Despite the Parties' agreement on what to do with the Four Month Notice, I have included legislative and policy information for their future use.

Section 49(6) of the Act states:

(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:

(a) demolish the rental unit;

Policy Guideline #2B, "Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use" ("PG #2B") is intended to help parties understand issues that are likely to be relevant in such an application. It may also help parties know what information or evidence is likely to assist them in supporting their position.

According to Policy Guideline #2B:

When ending a tenancy under section 49(6) of the *Residential Tenancy Act*, 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 the 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.

PG #2B also states:

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

I find that the Landlord did not provide copies of a permit(s) necessary for demolishing the rental unit, nor did the Landlord provide evidence that he did not require a permit for this purpose. Accordingly, I find that the Four Month Notice was served prematurely, and I cancel it. The Four Month Notice is of no longer of any force or effect.

Given the Tenants' success in this Application, I award them with recovery of the **\$100.00** Application filing fee from the Landlord. The Tenants are authorized to deduct \$100.00 once from an upcoming rent payment in full satisfaction of this award.

Conclusion

The Tenants are successful in their Application to cancel the Four Month Notice. The Landlord failed to provide evidence of a permit for the demolition planned for the residential property or his lack of need of a permit for this purpose. I cancel the Four Month Notice and find that it is of no force or effect and is unenforceable.

The Tenants are also awarded recovery of the \$100.00 Application filing fee from the Landlord. The Tenants are authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 30, 2021

Residential Tenancy Branch