



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group 1st West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on June 7, 2021. The Tenants 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. The Landlord confirmed receipt of the Tenants' Notice of Hearing and evidence, and the Landlord did not submit any 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

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

Background and Evidence

The Landlord did not present any proof of service for the Notice and did not provide any testimony or evidence to explain how and when the Notice was served. The Tenant acknowledged receiving the Notice on or around February 5, 2021, by registered mail.

The Notice indicates 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.”* Under the following portion of the Notice, the Landlord selected the box indicating that no permits and approvals are required by law to do the work.

Under the details section of the Notice, the Landlord stated the following:

Planned Work	Details of work (~If you are ending the tenancy for renovations or repairs, explain why the renovations or repairs require the rental unit to be vacant).
	The home owner wants to perform a full renovation including replacing the bathroom and kitchen plumbing, kitchen cabinets including countertops, all interior doors, electrical outlets including fixtures. The unit will receive new double panel windows, flooring will be removed and replaced including a fresh paint. Brand new appliances will be purchased and pervious appliances will be removed and disposed. The toilet including shower will be replaced bathroom flooring including cabinets will be replaced along with the bathroom mirror. Balcony will recevie new flooring including a new silding door.

The Landlord stated that they are wanting to do the above noted work, and they feel that the “liability issues” are too great to allow the Tenants to continue to reside in the rental unit while it is being refreshed. The Landlord stated that their tradespeople who are doing the above noted renovations have told them that no permits are required. The Landlord did not have any evidence to support this assertion, nor did the Landlord have any confirmation from the municipality or professional tradespeople showing that permits are not required for the “extensive” work that was being done.

The Tenants stated that they are more than willing to work with the Landlord while the renovations are being completed, but they want to continue the tenancy, otherwise they will face steep rent increases if they have to move. The Tenant pointed to her email communication and written communication with the municipality to show that the Landlord would likely need permits for the work being proposed, and that no permits have been applied for. The Tenants assert the Notice was issued in bad faith, and that the tenancy doesn’t need to end to perform the work.

Analysis

In the matter before me, once the Tenants allege 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.

Absent any evidence as to how and when the Landlord served the Tenants with the Notice, I accept the Tenants statements that they received the Notice on February 5, 2021. I find the Tenants were served that same day. The Tenants filed their application to cancel the Notice within the acceptable time frame (30 days). 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.

[...]

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.

Having reviewed the totality of this situation, I note the Landlord has provided no evidence to support his assertion that permits are not required for the work. As stated in the Policy Guideline above, the landlord must provide evidence to support this assertion. I find the Landlord has failed to provide sufficient evidence to support the Notice, particularly in light of the communications the Tenants had with the municipality (speaking to the fact permits may be required, and none have been obtained).

I hereby cancel the Notice, signed by the Landlord on January 25, 2021.

As the Tenants were successful with the application, I grant 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: June 07, 2021

Residential Tenancy Branch