



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oyster Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL- 4M

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property ("4 Month Notice"), pursuant to section 49.

HT ('landlord') testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenant confirmed receipt of the 4 Month Notice dated March 30, 2021, I find that this document was served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on November 1, 2007. Monthly rent is currently set at \$780.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$350.00, which the landlord still holds.

The landlord served the tenant with a 4 Month Notice on March 30, 2021 for the following reason:

- the Landlord is going to perform repairs or renovations to the rental unit that are so extensive that it requires the rental unit to be vacant.

On the 4 Month Notice, the landlord did not indicate the weeks or months the unit would need to be vacant, but confirmed in the hearing the estimate was two months. The landlord indicated the following work that was to be done in the rental unit:

Remove all drywall and replace with new drywall
Remove and replace all plumbing
Remove and replace all electrical
Remove and replace all flooring with new laminate
Remove and replace kitchen cupboards
Complete reno of bathroom

The landlord testified that no permits or approvals were required for this work. The landlord testified that there were a total of 35 units in the building, 16 of which were already renovated. The landlord offered the tenant the opportunity to move to a large bachelor unit on the same floor which has vacant and already renovated. The landlord initially proposed \$1,350.00 in monthly rent, and reduced it to \$1,300.00, which the landlord testified was as low as they could go.

The tenant is disputing the 4 month notice as the landlord as they feel that the work is not necessary, especially to the extent that requires the permanent end of this tenancy. The tenant receives a subsidy for their monthly rent, which is not sufficient to cover the cost of a renovated rental unit as proposed by the landlord.

Analysis

Subsection 49 of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, is going to perform renovations or repairs that are so extensive that it requires the rental unit to be vacant.

The burden of proof shifts to the landlord when a tenant disputes a 4 Month Notice, and the landlord must demonstrate that they do not have any other motive in ending this tenancy.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

In consideration of the evidence and testimony before me, I find that the landlord has not met their burden of proof to show that they had issued the 4 Month Notice in good faith. Although the landlord testified that they required the unit to be vacant to perform the repairs and renovations referenced on the 4 Month Notice, and that no permits or approvals were required for this work, I am not satisfied that the landlord has provided sufficient evidence to support that this work is not only necessary, but so extensive that it would require the tenant to permanently vacate the rental unit.

The evidence presented by both parties is that the landlord has intentions to renovate each rental unit, and rent out the renovated units at much higher rent. In light of the evidence before me, I am not satisfied that the repairs or renovations are necessary, nor do they require the tenant to permanently vacate the rental unit. Although the rental unit may require repairs, I note the landlord’s obligations to maintain and repair a rental unit during a tenancy as set out below:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am not satisfied that the 4 Month Notice was issued in good faith. Accordingly, I allow the tenant's application to cancel the 4 Month Notice. The landlord's 4 Month Notice, dated March 30, 2021 is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 4 Month Notice is allowed. The landlord's 4 Month Notice, dated March 30, 2021 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: August 31, 2021

Residential Tenancy Branch