



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL – 4, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("4 Month Notice").

An agent appeared on behalf of the tenant but there was no appearance on part of the landlord.

Since there was no appearance on part of the respondent, I explored service of hearing materials upon him.

The tenant's agent pointed to a registered mail receipt as proof the proceeding package was sent to the landlord via registered mail on July 9, 2021. The landlord's agent stated the registered mail was successfully delivered on July 12, 2021. I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear this matter.

I noted that in filing this Application for Dispute Resolution, the tenant, or his representative, pointed to an incorrect effective date in the details of dispute. I confirmed with the tenant's agent that the tenant seeks cancellation of the 4 Month Notice, with the effect the tenancy continues, and not merely a corrected effective date.

Issue(s) to be Decided

1. Should the 4 Month Notice be upheld or cancelled?
2. Award of the filing fee.

Background and Evidence

The tenant's agent was not entirely certain of the tenancy particulars but was of the understanding the tenant has a month to month tenancy requiring him to pay rent of \$750.00 on the first day of every month.

The tenant received a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit from the landlord dated May 26, 2021 and the tenant filed this Application for Dispute Resolution to dispute the 4 Month Notice on June 15, 2021, which is within the time limit for disputing a 4 Month Notice.

The 4 Month Notice was provided as evidence for this proceeding. The 4 Month Notice has a stated effective date of June 30, 2021. The reason for ending the tenancy is, as stated on the 4 Month Notice, to perform major repairs consisting of plumbing repairs under the floor which requires the floor to be ripped up. The 4 Month Notice indicates permits are not required to perform this work.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason indicated on the notice.

Although the stated effective date on the 4 Month Notice was incorrect, and should have read no earlier than September 30, 2021, an incorrect effective date does not invalidate a notice to end tenancy. Rather, section 53 of the Act provides that the effective date automatically changes to comply with the Act. Accordingly, I find the incorrect effective date is not a basis to cancel the 4 Month Notice, in itself.

However, in the absence of any evidence from the landlord to demonstrate the tenancy needs to end and the rental unit vacated in order to perform plumbing repairs under the floor, and that permits are not required to perform the planned work, I find the landlord has not met his burden of proof and I cancel the 4 Month Notice with the effect the tenancy continues at this time.

Given the tenant's success in this matter, I award the tenant recovery of the \$100.00 filing fee from the landlord. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover this award and in doing so the landlord must consider the rent paid in full.

Conclusion

The 4 Month Notice dated May 26, 2021 is cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the \$100.00 filing fee from the landlord. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover this award.

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 13, 2021

Residential Tenancy Branch