



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDHILL DEVELOPMENT (RICHMOND)
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M-MT, FFT

Introduction

On June 1, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with R.H. attending as her advocate. The Landlord attended the hearing with S.T. attending as the Landlord's agent. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that a Notice of Hearing and evidence package was served to each Respondent by hand on June 15, 2021 and S.T. confirmed that both of these packages were received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Respondents were duly served the Tenant's Notice of Hearing and evidence packages. As this evidence has been received in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision. S.T. advised that she served the Landlords' evidence by registered mail on September 17, 2021 and by hand on September 20, 2021. The Tenant confirmed that she received this evidence. Based on this undisputed testimony, as this evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlords' Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on July 1, 2020 as a fixed term tenancy ending on June 30, 2021. Rent was presently established at \$2,234.00 per month and was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant was served only the first two pages of the Notice by hand on December 9, 2020, and again on or around March 3, 2021. The reason the Landlords served the Notice was noted as "I am ending your tenancy because I am going to demolish the rental unit." The effective end date of the tenancy was noted as June 30, 2021.

The Tenant advised that she did not dispute this Notice after receiving it in December 2020 because she had no reason not to believe that the Landlords would be demolishing the rental unit. As well, she stated that she did not even know that she was able to dispute the Notice as she only received the first two pages of it. In addition, she submitted that the Landlords indicated on this Notice that they were in the process of obtaining the permits for demolition.

She confirmed that she received the identical first two pages of the Notice on or around March 5, 2021, except on this copy, the Landlords now indicated that they had the permits for demolition. Again, she did not dispute this as she had no reason to doubt that the Landlords would not be demolishing the rental unit and, in addition, she did not know she could dispute this Notice as she did not receive the last two pages. She stated that the only reason she disputed the Notice eventually is because sale signs were placed on the property, which was contrary to the Landlords claims to want to demolish the unit.

S.T. confirmed that it was “probably a mistake” that the full four pages of the Notice were not served, as it was their belief that these last two pages were unnecessary and contained only administrative information. She confirmed that they did not even have the permits required for demolition at the time the first two pages of the Notice were served in December 2020, and they only obtained the permit months later.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlords’ right to end a tenancy in respect of a rental unit where the Landlords intend in good faith to demolish the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, given that the Landlords have not served the complete four pages of the Notice, I am satisfied that what was served does not meet all of the requirements of Section 52.

Essentially, by not serving the entirety of the Notice, it gives the appearance that the Landlords were attempting to mislead the Tenant by not including the relevant information pertaining to her right to dispute the Notice. As such, I find that what the Landlords served to the Tenant does not constitute a valid Notice. Therefore, I find that the Notice of December 9, 2020 is cancelled and of no force and effect.

While the Landlords served a copy of this Notice, but slightly altered, again in March 2021, as this was not a new Notice, and as this was again only two pages, even if I were to determine this to be a separate Notice, this would be cancelled as well as it was only two pages.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from a future month's rent in satisfaction of this claim.

Conclusion

Based on the above, I hereby order that the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit of December 9, 2020 to be cancelled and of no force or effect. This tenancy continues until 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: September 30, 2021

Residential Tenancy Branch