



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON (CHURCH) PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL-4M, MNRL-S, FFL

Introduction

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

- an order of possession for landlord's use pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package and all of the submitted documentary evidence via Canada Post Registered Mail on July 19, 2021. The landlord has referenced a submitted copy of a Canada Post Customer Receipt Tracking label and Canada Post Receipt dated July 19, 2021 as confirmation of service. I accept the undisputed affirmed evidence of the landlord and find that the tenant is sufficiently served as per section 71 of the Act. Despite not attending the hearing the tenant is deemed served with both the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to a 4 month notice to end tenancy for demolition?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 3, 2017 on a fixed term tenancy ending on October 3, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 1, 2017. The monthly rent was \$1,000.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid.

The landlord seeks an order of possession as a result of issuing a 4 month notice to end tenancy for demolition.

The landlord stated that the tenant was served with a 4 month notice dated March 25, 2021 via Canada Post Registered Mail on March 25, 2021. The landlord has referenced a submitted copy of a Canada Post Customer Receipt Tracking label as confirmation of service.

The 4 month notice dated March 25, 2021 sets out an effective end of tenancy date of August 1, 2021 and the only reason selected as:

Demolish the rental unit.

No other selections were made and one notation was given regarding the planned work.

Full deconstruction of the home.

The landlord was unable to provide any clarification on why no other selections were made on the 4 month notice regarding permits.

During the hearing the landlord confirmed that a demolition permit was required and stated that a demolition permit was obtained after the application for dispute was filed on June 28, 2021.

During the hearing the landlord withdrew the monetary claim as he was not able to provide any monetary claim details.

Analysis

Section 49 (6) of the Act sets out that 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 demolish, renovate or repair the rental unit that requires the rental unit to be vacant.

In this case the landlord provided undisputed affirmed evidence that the landlord served the tenant with the 4 month notice dated March 25, 2021 by Canada Post Registered Mail on March 25, 2021. However, the landlord provided undisputed affirmed testimony that a permit is required for demolition of the building and that the permit was not obtained until after the application for dispute was filed. On this basis, I find that the landlord was pre-mature in the issuance of the notice to end tenancy and set aside and cancel that notice dated March 25, 2021.

During the hearing the landlord withdrew the monetary portion of the application. As such, no further action is required that portion of the application.

As the landlord has been unsuccessful, the request for recovery of the \$100.00 filing fee is dismissed.

Conclusion

The landlord's 4 month notice dated March 25, 2021 is cancelled. The tenancy shall continue.

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: October 26, 2021

Residential Tenancy Branch