



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green team realty inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT, MNDCT, CNL-4M, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 08, 2021 (the "Application"). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- For compensation for monetary loss or other money owed
- To dispute a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated November 28, 2021 (the "Notice")
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing. R.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The parties agreed there was no Two Month Notice to End Tenancy for Landlord's Use of Property on the RTB form issued to the Tenants and therefore I dismiss the dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property without leave to re-apply.

The Tenants confirmed the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice and therefore I dismiss this request without leave to re-apply.

Pursuant to rule 2.3 of the Rules, I told the Tenants I would consider the dispute of the Notice and dismiss the request for compensation for monetary loss or other money owed with leave to re-apply because it is not sufficiently related to the dispute of the Notice. The request for compensation for monetary loss or other money owed is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2020 and was for a fixed term ending April 30, 2021. Rent is \$2,550.00 per month due on the first day of each month. The Tenants paid a \$1,275.00 security deposit and \$1,275.00 pet damage deposit.

The Notice was submitted. The grounds for the Notice are that the rental unit will be demolished. The planned work and details of work section of the Notice state:

Demolish the house. Remove hazardous materials in the house first then demolish the house.

R.L. testified that the Notice was posted on the door of the rental unit November 25, 2021. The Tenants testified that they received the Notice November 28, 2021.

The most relevant documentary evidence submitted is an email from the city to the Landlord stating:

Please see the **attached PDF file from the Residency Tenancy Branch.**

In order for the hazardous materials to be removed, the tenant must vacate the building.

In order to issue the demolition permit, the **demolition permit policy attached** needs to be followed.

The **Demolition Letter** that was provided is the Letter we give out to Applicants to give to their Tenants.

If your tenant is not willing to accept the letter, please contact the Residency Tenancy Branch.

The Residency Tenancy Branch can contact us directly.

(emphasis added)

R.L. testified as follows. The rental unit has asbestos. The Tenants must vacate the rental unit in order for the hazardous material test to be completed because this cannot be done with the Tenants living in the rental unit. The email from the city in evidence shows that the Tenants must vacate the rental unit and that the demolition policy must be followed. The “letter” and “demolition policy” referred to in the email from the city is the RTB Policy Guideline 2B. In order for the Landlord to obtain a demolition permit, the Tenants have to vacate the rental unit otherwise a hazardous materials test cannot be done and a demolition permit cannot be issued.

I asked R.L. why the Landlord has not submitted the “demolition permit policy” referred to in the email from the city. R.L. took the position that the “demolition permit policy” is the RTB Policy Guideline 2B attached and submitted.

I asked R.L. if there is a document that sets out what the Landlord must do to get a demolition permit from the city. R.L. replied that they are not a builder and are not clear on what the permit application process is. R.L. testified that it is the builder who applies for the demolition permit and communicates with the city. R.L. submitted that the Landlord followed what the city told them to do in relation to the Notice and the city told the Landlord what they have provided is sufficient. R.L. said that if the RTB requires further information, the Landlord can get this from the city.

The Tenants testified as follows. The Tenants spoke to the city and no demolition permit has been issued to the Landlord. The Tenants want to be served properly with the Notice and demolition permit. R.L. says the Tenants need to be out of the rental unit because the Landlord has to remove asbestos but there is nothing in evidence stating this.

Analysis

The Notice was issued pursuant to section 49(6)(a) of the *Act* which states:

(6) 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...

(emphasis added)

Pursuant to section 49(8)(b) of the *Act*, the Tenants had 30 days to dispute the Notice.

I accept that the Notice was posted to the door of the rental unit November 25, 2021. I also accept that the Tenants received the Notice November 28, 2021. The dispute of the Notice was filed December 14, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

There is no issue that the Landlord requires a permit to demolish the rental unit and does not yet have this permit because the parties agreed on this.

RTB Policy Guideline 2B states at page three:

If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB. (emphasis added)

The Landlord is stating that conditions must first be met before the city will issue a demolition permit. However, the Landlord has not provided a copy of the policy or procedure which establishes what the conditions are or sufficient evidence showing that the Landlord has completed all steps possible to meet the conditions. It appears from the wording of the email from the city that three separate documents were, or should have been, attached to the email including RTB Policy Guideline 2B, a demolition permit policy and a Demolition Letter. The only document the Landlord has provided is the RTB Policy Guideline 2B. RTB Policy Guideline 2B does not set out what the city requires the Landlord to do before issuing a demolition permit as this would be a document provided by the city, not the RTB. R.L. submits that the RTB Policy Guideline 2B is the applicable policy or procedure; however, what the policy guideline is referring to in the paragraph set out above is the policy or procedure from the relevant authority that is issuing the demolition permit. In other words, the Landlord should provide the document setting out what they must do to obtain a demolition permit from the city and show that they have completed all steps possible while the tenancy is ongoing. The Landlord has not provided sufficient evidence showing what they must do to obtain a demolition permit from the city or showing that they have completed all steps possible while the tenancy is ongoing.

I acknowledge that the Landlord has submitted the email from the city and that it states, "In order for the hazardous materials to be removed, the tenant must vacate the building"; however, this one statement is not sufficient to meet the requirements set out in the above noted paragraph of RTB Policy Guideline 2B. The email from the city does not set out the process for obtaining a demolition permit from the city. It appears that the email from the city is in response to a communication from the Landlord, yet the Landlord has not submitted their communication. I do not have compelling evidence before me showing that there are hazardous materials in the rental unit or that a hazardous materials test has been completed. R.L. submitted that a hazardous materials test cannot be completed without the Tenants vacating the rental unit; however, there is no documentary evidence before me stating this. The email from the

city does not state that a hazardous materials test cannot be done during the tenancy, it states that the Tenants must vacate the rental unit for the hazardous materials to be *removed*, which is a different issue. It is not clear from the evidence provided why the city is referring to hazardous materials and whether this is based on something the Landlord told the city or something shown in a report. R.L. states that there is asbestos in the rental unit, yet there is no documentary evidence before me showing this.

R.L. stated during the hearing that they are not clear on what the demolition permit application process is, which is the very issue here. The Landlord has not provided sufficient evidence for me to know what the demolition permit application process with the city is, or sufficient evidence showing they have taken all possible steps to complete the process.

It is irrelevant whether the Landlord has done what the city told them to do in relation to the Notice. The Landlord is expected to know the *Act* and Policy Guidelines including RTB Policy Guideline 2B which specifically sets out what the Landlord was required to provide for this hearing. Further, the email from the city states that the RTB can contact them directly; however, this is not accurate. An arbitrator does not have the authority to directly contact third-parties to obtain information that the Landlord should have provided, and served on the Tenants, prior to the hearing. I note that R.L. did not seek to call witnesses at the hearing and therefore the author of the email from the city was not a witness at the hearing. As well, the Landlord cannot submit evidence after the hearing. The Landlord was required to submit their evidence, and serve it on the Tenants, not less than seven days prior to the hearing pursuant to rule 3.15 of the Rules.

I find the Landlord has not provided sufficient evidence to prove the Notice because the Landlord has not provided sufficient evidence outlining the conditions that must be met prior to the city issuing a demolition permit or sufficient evidence that the Landlord has taken all steps possible during the tenancy such that the tenancy must end prior to the Landlord completing the conditions. Given this, the Landlord has failed to prove the grounds for the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants were successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 21, 2022

Residential Tenancy Branch