



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, MNDCT

Introduction

The Tenant filed an Application for Dispute Resolution on September 27, 2021 seeking an order to cancel the Four-Month Notice to End Tenancy for Demolition, Renovation, or Conversion (the “Four-Month Notice”). Additionally, the seek the Landlord’s compliance with the legislation and/or the tenancy agreement, and monetary compensation. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 7, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other; on this basis, the hearing proceeded.

Preliminary Matters

The Tenant amended their Application on January 17, 2022. They added a claim for monetary compensation. This is the return of the security deposit they paid at the start of the tenancy, their Application filing fee, and \$9,600 for “12 months back rent for not acting in good faith.” This total amount is \$10,000.

In line with a notice to end tenancy for Landlord’s use – the *Act* s. 49 – a tenant is entitled to receive compensation. This is subject to subsection (2), where a Landlord does not establish that, after the end of tenancy, they did not accomplish the stated purpose for ending the tenancy, or the rental unit was used for at least 6 months’ duration. This question can only be resolved after a tenancy has ended.

At the time of this hearing, the Tenant remained in the rental unit. I dismiss the bulk of the Tenant's claim for this reason, and they are not entitled to the 12 months' rent compensation. That is reserved for cases post-tenancy where the Landlord does not accomplish the reason they ended the tenancy.

A tenant's entitlement to the return of the security deposit is governed by s. 38. That provides the condition that the tenancy has ended, when the Landlord must either repay that deposit, or apply via dispute resolution to claim against it. This tenancy has not yet ended; therefore, s. 38 does not apply. I dismiss this piece of the Tenant's claim.

I allow the Tenant's amendment to claim for a return of the Application filing fee. That issue is listed below.

Additionally, in their amendment, the Tenant raised the issue of the Landlord requesting a cleanup of the property, i.e., removal of belongs including vehicles. They assert this was the reason the Landlord issued the Four-Month Notice; this also constitutes "badgering." On this piece, they ask for the Landlord's compliance with the legislation and/or the tenancy agreement.

The *Residential Tenancy Branch Rules of Procedure* give an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter or urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the Four-Month Notice issued by the Landlord. On this basis, I dismiss the Tenant's claim for the Landlord's compliance with the *Act*, the Regulation, and/or the tenancy agreement.

Issues to be Decided

Is the Tenant entitled to an order that the Landlord cancel the Four-Month Notice, pursuant to s. 49 of the *Act*?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit pursuant to s. 55 of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant presented a copy of the documented part of the agreement between the parties. This shows the tenancy beginning December 1, 2007. The starting amount of rent was \$650; over time, this became \$800 per month. There was a verbal agreement between the Landlord and Tenant for the Tenant to maintain the rental unit and property. This began with a leaky roof when the Tenant moved in and continued from then on.

The Landlord presented that they issued the Four-Month Notice on the basis of their desire to develop the rental unit property for quite some time. They notified the Tenant of this “years ago.” They stated they made a mistake when issuing the Four-Month Notice in that they were not aware they need a permit. Since that time, they applied for and received a demolition permit; this appears in the Landlord’s evidence. The regional district issued this permit on January 25, 2022.

The Tenant is aware the Landlord must have a permit in place. They submit the Four-Month Notice was not issued in good faith for this reason. The Tenant also described a subsequent visit from the Landlord with a contractor who undertook hazmat assessment at the property. At this time, the Landlord delivered a letter to the Tenant demanding clean-up on the property. The Tenant also spoke to other work they performed as maintenance throughout the duration of their tenancy

Analysis

The *Act* s. 49(6) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to demolish the rental unit. A landlord must have all necessary permits and approvals that are required by law before they give the tenant notice.

Here, most importantly, the Landlord acknowledged their error and stated in the hearing they did not have the necessary permit in place at the time they issued the Four-Month Notice. I

find this is not a question of bad faith; rather, obligatory permits and approvals were not in place. Further evidence for this point is the permit issue date of January 25, 2022.

Because this requirement was not in place, I order the cancellation of the Four-Month Notice, and the tenancy shall continue.

As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reason above, I order the Four-Month Notice issued on August 30, 2021 is cancelled. The tenancy remains in full force and effect.

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

Dated: February 7, 2022

Residential Tenancy Branch