



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 26, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Demolition (the "Four Month Notice") dated September 30, 2021.

The Tenant, the Tenant's Representative C.R., and the Landlord attended and took part in the hearing. The Landlord stated she had two support persons, however, they did not take part in the hearing. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. 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 the 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 is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy started about 20 years ago. The parties do not have a written tenancy agreement between them. The Tenant is required to pay rent in the amount of \$250.00 to the Landlord on the first day of each month. The Tenant did not pay a deposit to the Landlord. The Tenant continues to occupy the rental unit.

The Landlord stated that she is seeking to end the tenancy as she intends to demolish the rental unit. The Landlord stated that the rental unit is an external structure on the rental property. The Landlord stated that the septic tank has failed and has been deemed unusable. Furthermore, the rental unit is nonconforming and is not insurable. The Landlord provided a copy of the permit she has acquired for demolition. The Landlord stated that the cost to repair the septic tank and rental unit are significant and she is unable to support this cost. As such, she intends to demolish the rental unit.

The Landlord stated that once she gains vacant possession, she would need to contact a Contractor to see what other permits or approvals are required to complete the demolition. The Landlord stated that once she has acquired all permits and approvals, she would then complete the demolition. The Tenant stated that there have been no inspections completed on the rental unit. The Landlord stated that she was waiting on the outcome of the hearing before gathering further permits and approvals to complete the demolition.

The Landlord stated that she served the Tenant in person with the Four Month Notice on September 30, 2021, with an effective vacancy date of January 31, 2022. The Tenant confirmed having received the Four Month Notice on September 30, 2021. The Landlord's reason for ending the tenancy on the Four Month Notice is to;

“Demolish the rental unit”

The Landlord has also indicated on the Four Month Notice that he has obtained all permits and approvals required by law to do this work. A copy of the Four Month Notice was submitted by the Landlord in support.

The Tenant responded by stating that he was led to believe that he would be permitted to continue to occupy the rental unit long term past retirement. The Tenant stated that he has made several improvements to the rental unit and paid out of pocket for the upgrades. The Tenant stated that he is on a fixed income.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states 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 the rental unit.

According to the Residential Tenancy Policy Guideline 2 B:

When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord **must have all necessary permits and approvals that are required by law before they give the tenant notice**. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The Landlord served the Tenant in person with the Four Month Notice on September 30, 2021, with an effective vacancy date of January 31, 2022. The Tenant confirmed having received the notice on the same date. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the *Act*.

According to subsection 49(8)(b) of the *Act*, a Tenant may dispute the Four Month Notice by making an application for dispute resolution within 30 days after the date the Tenant receives the notice. The Tenant received the Four Month Notice on September 30, 2021 and filed their Application on October 26, 2021. As such, I find that the Tenant disputed within the 30 day time limit under the *Act*.

In this case, I find that the Landlord, in her own testimony, indicated that once she gains vacant possession of the rental unit, she will contact a Contractor to see what other permits and approvals are required to demolish the rental unit. I find that the Landlord **MUST** have all the permits and approvals that are required by law **BEFORE** they give

the Tenant Notice. I further find that the demolition permits provided by the Landlord does not appear to have a date of which the permit was issued or expires, nor does it have a signature from a building official.

In light of the above, I find that the Landlord has provided insufficient evidence to demonstrate that she had all permits and approvals prior to serving the Tenant with the Four Month Notice. I therefore cancel the Four Month Notice dated September 30, 2021 and order that the tenancy continue until it is ended in accordance with the *Act*.

Conclusion

The Tenant's Application seeking cancellation of the Four Month Notice dated September 30, 2021 is successful. As such, the Four Month Notice is cancelled, and the tenancy has been ordered to continue until it is 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: March 09, 2022

Residential Tenancy Branch