



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL-4M**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for a Four Months' Notice to End Tenancy For Demolition (the "Four Months' Notice") pursuant to Sections 49(6), 55 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, JP, and the Tenant, JN, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package on May 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord uploaded the Canada Post registered mail receipt with tracking number into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on May 18, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issue to be Decided

Is the Landlord entitled to an Order of Possession for a Four Months' Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord purchased this property late last year. The parties confirmed that this periodic tenancy began on April 1, 2013. Monthly rent is \$600.00 payable on the first day of each month. The Tenant stated a security deposit of \$275.00 was collected at the start of the tenancy and the Landlord stated he received this from the notary.

The Landlord served the Four Months' Notice on the Tenant on November 18, 2021, by placing the document in the Tenant's mailbox. The Landlord testified that another co-Landlord witnessed the service of this document. The reason in the Four Months' Notice why the Landlord seeks to end this tenancy is because they are going to demolish the rental unit. The notice continues to state that the work the Landlord plans to do is:

Asbestos remediation	-Removal of all asbestos found present throughout unit/entire building
Mold remediation	-Removal of mold present
Plumbing updating/leaks	-leaks/faulty equipment to be repaired with water services off for several weeks
Electrical safety	-Power service being severed for weeks due to water leaking on fuse boxes/safety

The Tenant confirmed receipt of the Four Months' Notice but did not dispute it.

The Landlord testified that the building is in rough shape. They do not plan to demolish the residential property, rather they plan on doing a conversion of the units with all the work being internal. The exterior structural walls will remain. The Landlord stated that no permits are required for their planned work.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

All tenancies must end in accordance with Section 44 of the Act. I find the Landlord seeks to end the tenancy in accordance with Section 44(1)(a)(v) of the Act, pursuant to Section 49 Landlord's notice: landlord's use of property. The reason in the Four Months' Notice served on the Tenant is to demolish the rental unit. Section 52 of the Act requires an analysis of the notice to end tenancy. It states to be effective, a notice to end a tenancy must be in writing and must:

- (a) *be signed and dated by the landlord or tenant giving the notice,*
- (b) *give the address of the rental unit,*
- (c) *state the effective date of the notice,*
- (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) *for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) *when given by a landlord, be in the approved form. (emphasis mine)*

RTB Policy Guideline #2B-Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use intends to assist parties to understand issues that are likely to be relevant in their matter. It states:

A. LEGISLATIVE FRAMEWORK

Section 49(6) of the Residential Tenancy Act (RTA) 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:

- a) *demolish the rental unit;*

...

B. PERMITS AND APPROVALS REQUIRED BY LAW

"Permits and approvals required by law" can include:

- *demolition, building or electrical permits issued by a municipal or provincial authority;*

...

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal

or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

...

C. DEMOLITION

Section 49(6)(a) of the RTA allows a landlord to end a tenancy to demolish a rental unit. Demolition means the complete and irreversible destruction of the rental unit. Usually, but not always, this involves the destruction of the building containing the rental unit. This may also involve partial demolition of a building so that the rental unit ceases to exist.

If the tenancy is ending under section 49(6)(a), the tenant has no right of first refusal to enter into a new tenancy agreement with the landlord for the rental unit.

... (emphasis mine)

The Landlord served the Four Months' Notice on the Tenant on November 18, 2021. The Landlord's testimony was that the whole building will remain, but that the Landlord will be doing conversion of the rental units - just internal work, nothing to the structural walls of the residential property. I find that the Landlord's grounds for ending the tenancy is truly not what the Landlord intends to do. I find the Four Months' Notice does not comply in form and content with Section 52 of the Act and, in accordance with this finding, I cancel the Landlord's Four Months' Notice. I dismiss the Landlord's application seeking an Order of Possession based on the Four Months' Notice without leave to re-apply. The tenancy will continue until ended in accordance with the Act.

Conclusion

The Four Months' Notice did not properly state what the Landlord intended to do, and the notice is cancelled and of no force or effect. The tenancy will continue 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 Act.

Dated: June 22, 2022

Residential Tenancy Branch