



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREIGHTON AND ASSOCIATES
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, LAT, CNL-4M, AAT, OLC, FFT**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition of Property (the "4 Month Notice") pursuant to section 49;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant was assisted by an advocate.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties confirmed that the 1 Month Notice dated April 20, 2022 has been cancelled and is of no further force or effect. The tenant withdrew all portions of their application other than that seeking cancellation of the 4 Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recovery of the filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following background facts. This periodic tenancy began on June 1, 2020. The current monthly rent is \$2,714.00 payable on the first of each month. A security deposit of \$1,300.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building of 263 units.

The landlord issued a 4 Month Notice dated April 20, 2022 with an effective date of August 31, 2022 indicating the reason for the tenancy to end is that the landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property. The tenant confirmed receipt of the 4 Month Notice and filed their application for dispute resolution on April 26, 2022.

The landlord testified that the rental unit is a two-bedroom suite that has traditionally been provided to the resident manager of the building. The previous manager did not

require a two-bedroom suite and moved to another, smaller unit in the building allowing the landlord to rent out the suite to the tenant. The landlord said that previous manager has now retired, and the current manager of the building has requested to move from another unit in the building to the two-bedroom rental unit.

The landlord submits that they issued the 4 Month Notice in good faith as there are financial consequences under the *Act*, if they do not accomplish the stated purposes for ending the tenancy. The landlord submits that the 1 Month Notice of April 20, 2022, which was issued at the same time as the present 4 Month Notice, and past disputes with the tenant had no part in their decision to issue the 4 Month Notice. The landlord testified that they intend to move their building manager into the rental unit as stated on the notice.

Analysis

Section 49(8)(b) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (6) the tenant may, within thirty days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 4 Month Notice was received on or about April 20, 2022 and the tenants filed their application for dispute resolution on April 26, 2022. I therefore find the tenant are within the time limits provided under the *Act* to dispute the 4 Month Notice.

As set out in Residential Tenancy Rule of Procedure 6.6 when a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 4 Month Notice on a balance of probabilities.

In the present case I find the landlord has not met their evidentiary onus to demonstrate the reasons provided on the Notice. The landlord failed to submit any documentary evidence to support their testimony and provided little details about the intended use of the property. The landlord submits that the rental unit has traditionally been provided to resident managers as a condition of employment but provided no contract of employment or affidavits from past managers to support this statement. The landlord said that the current manager has requested to occupy the rental suite but the landlord failed to call the manager as a witness or provide any correspondence or documentary materials showing that such a request was made. I find the landlord's submissions lack

details, are not supported in independent documentary materials and are insufficient to meet their evidentiary onus.

I find the landlord's submissions that their intention must be genuine as there are financial consequences prescribed under the Act for violations to be spurious and have little probative value. I do not find it reasonable or logical to conclude that there can be no breaches of the *Act* simply because the *Act* prescribes penalties or corrective measures.

Based on the paucity of the landlord's evidence, I find the landlord has failed to satisfy the burden of proof on a balance of probabilities. I am not satisfied that the landlord has the good faith intention to convert the rental unit for occupation by a caretaker or manager as stated on the 4 Month Notice. I therefore allow the tenants' application to cancel the 4 Month Notice. This tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application, I allow them to recover the filing fee from the landlord. As this tenancy is continuing, they may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenants are successful in their application. The 4 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The 1 Month Notice of April 20, 2022 has been withdrawn and the balance of the tenants' application has been withdrawn and dismissed without leave to reapply.

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: August 26, 2022

Residential Tenancy Branch