



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing was set to deal with a tenant's request for cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("4 Month Notice").

Both parties appeared for the hearing. The tenant was assisted by an Advocate. The landlord appeared along with his wife and authorized his wife to represent him as he had to return to work. The landlord then left the teleconference call. The tenant and the landlord's wife were affirmed.

I confirmed the tenant served her proceeding materials upon the landlord and the landlord received the tenant's materials.

The landlord had also submitted materials to the Residential Tenancy Branch but had not served them to the tenant. Accordingly, I did not admit the landlord's materials but I informed the parties that the landlord's representative may present the landlord's evidence orally during the hearing.

I amended the style of cause to remove the landlord's nickname.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

Issue(s) to be Decided

Should the 4 Month Notice be upheld or cancelled?

Background and Evidence

The tenancy started on June 1, 2015 and the tenant is currently required to pay rent of \$1071.00 on the first day of every month.

On August 31, 2022 the landlord issued the subject 4 Month Notice. The 4 Month Notice was given to the tenant's adult son, who resides with the tenant in the rental unit, on September 1 or 2, 2022.

The reason for ending the tenancy, as stated on the 4 Month Notice, is that the landlord intends to demolish the rental unit. In the planned work and details section on the 4 Month notice, the landlord describes that a new home is going to be constructed on the property.

The tenant filed to dispute the 4 Month Notice within the time limit for doing so, indicating the landlord does not have a demolition permit in place.

During the hearing, I asked the landlord's representative if the landlord has received a demolition permit. The landlord's representative testified that a demolition permit application was filed but it was rejected by the City due to an error the contractor made in making the application. The building permit application has been re-submitted to the City and is currently pending approval.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The 4 Month Notice issued by the landlord provides a reason for ending a tenancy that is found in section 49(6) of the Act, as I have reproduced below:

(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;

[My emphasis underlined]

Section 49(6) of the Act clearly requires that a landlord has all permits and approvals that are required to do the activity stated on the 4 Month Notice when the 4 Month Notice is issued. Without the permits and/or approvals in place, the landlord may not end the tenancy. In this case, the landlord has put forth that the rental unit will be demolished. As such, the landlord requires the demolition permit to be issued by the City prior to issuing the 4 Month notice.

Information pertaining to the requirement to have permits in place prior to the issuance of a 4 Month Notice is also provided on page 3 of the 4 Month notice.

Although the tenant did not upload all four pages of the 4 Month Notice, the tenant acknowledged that she was served with all four pages. The landlord's representative did not have the 4 Month Notice in front of her during the hearing. As such, I reproduce the relevant portion of page 3 of the 4 Month Notice below for the parties' further reference:

2. PERMITS AND APPROVALS REQUIRED BY LAW

Your landlord must have all permits and approvals required by law before they give you this notice. Permits and approvals required by law can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. Strata corporations may also require certain permits and approvals before a rental unit can be converted to a non-residential use and there may be strata bylaws that prohibit the rental unit from being used for a non-residential purpose.

In light of the above, it is undisputed that the landlord requires a demolition permit from the City to legally demolish the rental unit and the landlord issued the subject 4 Month Notice before receiving a demolition permit. Therefore, I find the 4 Month Notice was issued prematurely and it is of no force or effect since it does not comply with the requirements of section 49(6)(a) of the Act.

The tenant's application to cancel the 4 Month Notice dated August 31, 2022 is granted and the tenancy continues at this time.

Since the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee she paid for this application. The tenant is authorized to deduct

\$100.00 from a subsequent month's rent to recovery this award and in doing so the landlord must consider the rent to be paid in full.

It was unnecessary for me to hear any submissions regarding the landlord's good faith intention to end the tenancy and I make no findings with respect to the landlord's good faith intention to end the tenancy. Upon receipt of a demolition permit for the rental unit, and if the landlord still intends to demolish the rental unit, the landlord is at liberty to issue another 4 Month Notice to the tenant. Upon receipt of another notice to end tenancy, the tenant is at liberty to accept the tenancy will end for the stated reason or file another Application for Dispute Resolution to dispute the notice.

Conclusion

The tenant's application to cancel the 4 Month Notice dated August 31, 2022 is granted and the tenancy continues at this time.

The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee she paid for this application and in doing so the landlord must consider the rent to be paid in full.

The landlord remains at liberty to issue another 4 Month Notice after receiving the applicable permit from the City.

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: February 07, 2023

Residential Tenancy Branch