



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act*, (the “Act”), to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated October 14, 2022, and to recover the filing fee paid for this application. The matter was set for a conference call.

Both the Landlords and their Legal Counsel (the “Landlord”) as well as both the Tenants and their Legal Counsel (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice dated October 14, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee for these proceedings?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord testified that they had served the Notice to End tenancy to the Tenant by personal service on October 14, 2022, indicating that the Tenant is required to vacate the rental unit as of November 30, 2022. Both parties provided a copy of the Notice into documentary evidence. The reason checked off by the Landlords within the Notice is as follows:

- *Rental unit/site must be vacated to comply with a government order*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Landlord submitted that they received a letter dated October 14, 2022, from their local municipal authority, that ordered them to end this tenancy. The Landlord testified that their property was inspected on September 29, 2022, by a municipal inspector who advised them that the rental unit (secondary suite) in their property was an illegal suite. The Landlord testified that the municipal inspector advised them on the date of the inspection that there were also a significant number of deficiencies and that the rental unit did not meet building or by-law standards. The Landlords submitted a copy of the October 14, 2022, letter into documentary evidence.

The Landlord testified that they obtained an estimate to see how much it would cost to bring the rental unit up to building or by-law standards, but that the cost was too high so they decided to decommission the rental unit as per the second option provided to them in the October 14, 2022, letter.

I Landlord submitted that they have obtained the required building permit from the local municipal authority to decommission the rental unit. The Landlord submitted a copy of a

second letter from the municipal authority dated February 14, 2023, into documentary evidence.

The Tenant testified that the October 14, 2022, letter from the local municipality authority was not an order to shut down the rental unit, but in fact a list of options available to the Landlord, the first was to bring the rental unit in compliance with the local secondary suite by-laws and the second was to decommission the rental unit. The Tenant submitted that the Landlord should not have issued the One-Month Notice to end their tenancy due to government order, as no order has been made by the municipality authority.

The Tenant also submitted that if the Landlord has obtained a building permit to either demolish, renovate or convert the rental unit, the Landlord is required to apply for permission to issue a Four-Month Notice to end this tenancy for those reasons.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Landlord has submitted that they received a government order to end this tenancy, and the Tenant has submitted that the letter received by the Landlord was not an order to end their tenancy but an letter providing the Landlord with available options.

I find that the parties, in this case, offered conflicting verbal testimony regarding whether or not the October 14, 2022, letter from the local municipal authority constituted an order to end this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proof in these proceedings to prove that their Notice was issued in accordance with the *Act*. Therefore, I find that it is the Landlords who hold the burden of proof in these proceedings.

I have reviewed the letter dated October 14, 2022, which states the following:

“The Town of View Royal inspected your property Thursday, September 29, 2022, and confirmed the presence of an unauthorized secondary suite. The

property it is not in compliance with the *Secondary Suite Bylaw No 601, 2007* and requires that the Secondary Suite obtain a permit or be decommissioned.

If you wish to obtain a Secondary Suite permit, please make an application for a Secondary suite and an application for a building permit to install a secondary suite. Should you wish to remove the suite please make a building permit application to decommission the suite”

[Reproduced as Written]

After reviewing this letter, the testimony and full submissions of these parties, I find that the October 14, 2022 letter, issued by the local municipal authority, did not specifically order that this tenancy had to end. On the contrary, this letter gave the Landlords two options, to either obtain a permit to keep the rental unit or obtain a permit to decommission the rental unit. As this letter did not specifically order the Landlords to end this tenancy, I find that the Landlords Notice to end this tenancy due to government order was not issued in accordance with the *Act*. Consequently, I grant the Tenants application to cancel the One-Month Notice dated October 14, 2022, and I find the Notice is of no force or effect.

Overall, after my review of this letter, I find that section 49.2 may apply to this case, as the only options provided to the Landlord are to either obtain a building permit to renovate the rental unit to bring it in line with local building and by-law standards or to obtain a building permit to decommission the rental unit. Section 49.2 of the *Act* states the following:

Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 [tenant's compensation: section 49.2 order], a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;*
- (b) the renovations or repairs require the rental unit to be vacant;*
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;*
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.*

(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) An order granted under this section must have an effective date that is

(a) not earlier than 4 months after the date the order is made,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I acknowledge the Landlords' submissions that they have obtained a building permit from the municipal authority to decommission the rental unit. However, pursuant to section 49.2(1) of the *Act* a landlord must make an application for dispute resolution requesting an order be issued to end a tenancy for the demolition, renovation or conversion of a rental unit. Therefore, the Landlords' recourse, in this case, would be to submit an application to the Residential Tenancy Branch for the required hearing process.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this awarded amount.

Conclusion

I grant the Tenants application, and I find the Notice dated October 14, 2022, is of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent, in the recovery of their filing fee paid for these proceedings.

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 1, 2023

Residential Tenancy Branch