



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes OPL-4M, FFL

Introduction

The Landlord seeks an order of possession pursuant to sections 49(6)(a), 49(9), and 55(2)(b) of the *Residential Tenancy Act* (the “Act”).

The Landlord also seeks a monetary order to recover the cost of the application filing fee pursuant to section 72(1) of the Act.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the cost of the application filing fee?

Background and Evidence

The tenancy began September 1, 2021. Monthly rent is \$2,700.00 and the Tenant paid a security deposit in the amount of \$1,350.00. A copy of the tenancy agreement is in evidence.

On September 28, 2022 the Landlord served a Four Months’ Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the “Notice”) on the Tenant. Service of the Notice was done by Canada Post registered mail and the Tenant received the Notice on September 29, 2022.

A copy of the Notice is in evidence, and it indicates that the tenancy is being ended so that the Landlord can demolish the rental unit, which is a residential house. Page two of the Notice also indicates that the Landlord had obtained all the necessary permits and approvals required to demolish the rental unit. The effective end of tenancy date as indicated on the Notice was January 31, 2023

The Landlord testified under oath that they seek an order of possession based on the Notice and the Tenant not having disputed the Notice. The Landlord testified that the permit to demolish the property was essentially pending confirmation that the water supply to the house was shut off. However, the city will not shut the water supply off until the Landlord can prove or verify that the house is actually vacant. And the only way for that to proceed is for the Tenant to vacate the rental unit.

Submitted into evidence by the Landlord were copies of various email and municipal permit documentation regarding this multi-stage permit requirement.

The Tenant testified under oath that he did not dispute the Notice because it was his understanding that the Landlord needed to attach copies of any permit or permit documentation to the Notice. The Tenant called the Residential Tenancy Branch and, according to him, an information officer told him that the Notice would be considered incomplete. It was the Tenant's position that the Landlord's documents and permits needed to be all in order before the Notice could be recognized as being valid. Either the Tenant or the information officer at the Branch recognized that there was a risk to not having the Notice disputed, however.

Further, the Tenant testified that the Landlord had gone back and forth on their decision about demolishing the house. The Landlord had apparently also proposed that the Tenant pay an increase in rent (upwards of \$3,500); that proposal went nowhere.

In rebuttal, the Landlord testified that there was not any back and forth and that she proceeded with applying for a permit in June 2022. She testified that she fully intends to demolish the house as soon as possible.

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. Thus, the Landlord in this application is required to prove that they are entitled to an order of possession of the rental unit based on the Notice.

Section 49(6)(a) of the Act enables 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 demolish the rental unit. The Landlord in this dispute issued the Notice under the authority of section 49(6)(a) of the Act.

Having found that the Notice was issued under a valid section of the Act, the form and content of the Notice must be considered. Section 49(7) of the Act requires that any notice to end tenancy given under this section comply with section 52 of the Act.

Section 52 of the Act states that in order for a notice to end a tenancy to be effective, the notice 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, [. . .] and
- (e) when given by a landlord, be in the approved form.

Having reviewed the Notice, I find that the Notice complies with section 52 of the Act and therefore with section 49 (7) of the Act.

At this point, it is important to recognize that there is no requirement under sections 49 and 52 of the Act that a notice to end tenancy for demolition of a rental unit include copies of any permits. A landlord is only required to produce copies of such permits when a tenant makes an application to dispute the notice to end the tenancy (see *Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*, page 2, para. 5).

Further, if a required permit cannot be issued because there are other conditions that must first be met (such as the shutting off of water to the house), the landlord should provide a copy of the policy or procedure which establishes the conditions and show that they have completed all steps possible prior to issuing a notice to end tenancy.

In this dispute, the Landlord has provided sufficient and persuasive evidence to show that they cannot obtain a “final” permit to demolish the property until the water is shut off. And that cannot happen until the Tenant has vacated the property. (See *Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*, page 3, para. 3).

For these reasons, then, it is my finding that the Notice is valid.

In respect of the Tenant's not having disputed the Notice, I must turn to section 49(9) of the Act which states that when a tenant receives a notice to end the tenancy and they do not make an application to dispute that notice, then the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the application of section 49(9) of the Act to the facts, I must conclude that the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2023 and he is thus required to vacate the rental unit.

Regarding the Landlord's application for an order of possession based on the undisputed Notice, section 55(2)(b) of the Act allows a landlord to request an order of possession of a rental unit when a notice to end the tenancy was given by the landlord, the tenant did not dispute the notice by making an application for dispute resolution, and the time for making such an application has expired. In this case, the Tenant had until October 29, 2022 to file an application to dispute the Notice, which he did not.

For these reasons, it is my finding that the Landlord has proven that they are entitled to an order of possession based on the undisputed Notice. A copy of the order is issued in conjunction with this decision to the Landlord. The Landlord must serve a copy of the Notice upon the Tenant by any method permitted under section 88 of the Act.

The parties will note that the effective date of the order of possession is March 31, 2023. Therefore, the Tenant must vacate the rental unit by 1:00 PM on March 31, 2023.

On a final note, the parties are referred to sections 55(1), 55(1.1), and 55(1.2) of the Act regarding compensation that may be owed to the Tenant by the Landlord.

Under section 72 of the Act, an arbitrator can order one party to pay the cost of a fee to another party. Typically, when an applicant is successful in their application, the respondent is ordered to pay an amount equal to the applicant's filing fee.

In this dispute, because the Landlord was successful, the Tenant is ordered to pay \$100.00 to the Landlord. Pursuant to section 38(4)(b) the Landlord is authorized to retain \$100.00 of the Tenant's security deposit in full satisfaction of this recovery.

Conclusion

The application is hereby granted.

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: March 4, 2023

Residential Tenancy Branch