



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”), to cancel Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, (the “Notice”) issued November 27, 2022. The matter was set for a conference call

The Landlord and 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 require 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 issued on November 27, 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 paid for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they issued the Notice to end tenancy to the Tenant by posting it to the front door of the rental unit on November 27, 2022, indicating that the Tenant is required to vacate the rental unit on March 31, 2023. The reason checked off by the Landlord within the Notice was as follows:

- *Perform renovations or repairs that are so extensive that the rental unit must be vacant.*

The Landlord testified that they did not have a hearing with the Residential Tenancy Branch to obtain permission to issue this Notice.

Analysis

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

The Tenant's application called into question whether the Landlord had complied with the Act when they issued this Notice without having a hearing with the Residential Tenancy Branch to obtain permission first. Section 49.2 of the *Act* states the following regarding a Notice to end tenancy for repairs or renovations:

Landlord's notice: landlord's use of property

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 accept the testimony of the Landlord they did not make an application for dispute resolution with the Residential Tenancy Branch requesting an order ending a tenancy before they issued this Notice. As this step is required before this Notice can be issued, I find that the Landlord breached section 49.2(1) of the Act when they issued this Notice without obtaining permission to do so first.

Therefore, I grant the Tenant's application to cancel the Notice issued on November 27, 2022, and I find that the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant are granted permission to take a one-time deduction of \$100.00, from their next month's rent.

Conclusion

The Tenant's application to cancel the Notice issued on November 27, 2022, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: May 3, 2023

Residential Tenancy Branch