



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL-4M, FFT

Introduction

The tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a four-month notice to end tenancy, signed December 31, 2022 (the “Four-Month Notice”), for demolition, or conversion to another use; and
- return of the filing fee pursuant to s. 72.

B.O. appeared as the Tenant. S.L. appeared as the Landlord and was joined by her friend, M.M., who provided support.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served the Landlord with her application and evidence via registered mail, which the Landlord acknowledged receiving without issue. I find that the Tenant served her application materials in accordance with s. 89 of the *Act*.

Cancellation of the Four-Month Notice

I am provided with a copy of the Four-Month Notice by the Tenant, which shows that it was issued on the basis various renovations. At the outset of the hearing, I enquired whether the Landlord had obtained an order permitting her to undertake the renovations. The Landlord explained that she did not and had served the Four-Month Notice without realizing he had to do so.

Section 49(6)(b) of the *Act* permitted a landlord to end a tenancy for renovations, though this section was repealed and replaced with s. 49.2 of the *Act* on July 1, 2021. Under s. 49.2, a landlord must first apply to the Residential Tenancy Branch for an order of possession for renovations and demonstrate the relevant aspects set out under s. 49.2(1).

In this instance, the Landlord is not permitted to end a tenancy for renovation without first applying to the Residential Tenancy Branch for an order of possession. Accordingly, the Four-Month Notice was issued under a part of the *Act* that is no longer in force. Given this, I find that the Four-Month Notice is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The tenants also seek the return of their filing fee. Generally, the successful party gets their filing fee back. In this situation, the Landlord tells me that she learnt of her error and attempted to talk to the tenants about withdrawing this application but had difficulty doing so. The Tenant says that she requested all communication be in writing and says that when they did speak to the Landlord, they felt that she was threatening eviction.

I accept that the Landlord should have never served the Four-Month Notice, which put the tenants in a position of disputing it, even though it was wrong on its face. I find that the tenants are entitled to their filing fee under these circumstances, since the application was necessitated by the Landlord serving the Four-Month Notice.

Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the tenants' \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the tenants retain \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of their filing fee.

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 19, 2023

Residential Tenancy Branch