



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord's use of property based upon a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit pursuant to section 55;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend the hearing. The landlord advised the tenant had vacated quite some time ago but still was requesting an order of possession.

Issues

Should the landlord be granted an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Evidence & Analysis

The landlord served the tenant with the Four Month Notice on January 20, 2023. The Four Month Notice had an effective date of May 31, 2023. The grounds for issuing the notice was not checked off. In the details section of the Four Month Notice it states the unit requires major renovations.

Section 52 of the Act requires that in order to be effective, a notice to end tenancy must state the grounds for ending the tenancy.

Page 2 of the Two Month Notice requires a landlord to put an "x" in all boxes that apply as the grounds for issuing the Notice. The landlord failed to check off any of the boxes.

Further, the provision of the Act pertaining to ending a tenancy for renovation or repair was repealed in January 2021. The new requirement as per section 49.2 of the Act is as follows:

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.

Accordingly, the Two Month Notice dated January 20, 2023, is hereby cancelled and of no force or effect. The landlord's request for an order of possession is dismissed.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application seeking an order of possession based upon a Four Month Notice is dismissed.

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: June 22, 2023

Residential Tenancy Branch