



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding EPIC NE ALBION HOMES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application: CNR, FFT
Landlord's application: OPM

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear cross applications.

The tenant's application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46;
- An authorization to recover the filing fee for this application, under section 72

The landlord's application pursuant to the Act is for:

- An order of possession under a mutual agreement to end a tenancy, pursuant to sections 44 and 55;

Issues to be Decided

Should the 10 Day Notices be cancelled? Is the landlord entitled to an Order of Possession under any Notice or Mutual Agreement?

Is the tenant entitled to recover the filing fee?

Background and Evidence

I have considered all the evidence and testimony, but I will only refer to what is relevant in my decision.

Both parties confirmed that the current landlord inherited the tenancy from a previous property owner. According to the tenant, the tenancy has been in place for 28 years. Both parties confirmed that the tenant has been paying the current landlord \$1,600.00 per month in rent, due on the first day of each month.

During the hearing, both parties advised that, preceding the mutual agreement to end tenancy (dated June 30, 2023) and the 10 Day Notices (at least three were signed September 8, 2023), there was a Four Month Notice to end tenancy for demolition. The landlord confirmed that, at the time, they had not yet obtained the permits needed to issue the Four Month Notice.

When the tenant found out that the Four Month Notice was invalid, the tenant felt that they were being coerced into agreeing to vacate via the subsequent mutual agreement to end tenancy, and later, the 10 Day Notices. The tenant stated that the landlord was trying to trick and/or intimidate him into vacating, which led to a breakdown of communication and trust – which is why he stopped paying rent. As of the date of the hearing, the tenant confirmed they are owing three months of rent, in the amount of \$4,800.00.

The landlord stated that, as of the date of the hearing, they have now obtained all the necessary permits to reissue a new and valid Four Month Notice – however these permits were not submitted as evidence for this hearing.

Analysis

As discussed at the hearing with the parties, I find that the mutual agreement to end tenancy as well as at least three 10 Day Notices signed September 8, 2023, all flow from the Four Month Notice. I have confirmed that the Four Month Notice, at the time, was invalid as the permits were not yet secured by the landlord. This led to a series of actions by both sides that were not in compliance with the Act, and ultimately, a breakdown of trust between the parties.

I have considered the unique circumstances and merits of the claims before me. To resolve this dispute, as per section 62 of the Act, I cancel the mutual agreement to end tenancy and all of the 10 Day Notices issued by the landlord before the date of this hearing.

I order the tenant to pay the landlord the sum of \$4,800.00 in unpaid rent, minus \$100.00 as authorization to recover the filing fee.

The landlord may issue a new Four Month Notice if they have met all the necessary requirements to do so.

Conclusion

I grant the cancellation of all 10 Day Notices issued to the tenant by the landlord prior to the date of the hearing. I also cancel the mutual agreement to end tenancy.

I grant the landlord a Monetary Order **in the amount of \$4,700.00** to be served to the tenant. These Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: November 01, 2023

Residential Tenancy Branch