



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he personally served the landlord with the notice of dispute resolution package on July 3, 2018. The landlord confirmed receipt of the notice of dispute resolution package from the tenant but could not recall on what date. I find that the landlord was served with this package on July 3, 2018 in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Four Month Notice is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2017 and is currently ongoing. The original term of the tenancy was a one-year fixed term tenancy ending on June 1, 2018 with the option of the tenancy continuing on a month to month bases thereafter. Monthly rent in the amount of \$1,300.00 is payable on the first day of every month. A security deposit of \$637.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 1, 2018, she posted a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit with an effective date of October 31, 2018 (the "Four Month Notice") on the tenant's door. The tenant confirmed receipt of the Four Month Notice on July 1, 2018.

The Four Month Notice stated that the landlord is ending the tenancy because the landlord is going to:

- perform renovations or repairs that are so extensive that the rental unit must be vacant; and
- convert the rental unit to a non-residential use.

The Four Month Notice states that:

- No permits and approvals are required by law to do this work.

The landlord did not complete the section of the Four Month Notice providing details of the planned work.

The landlord testified that she plans on converting the rental property to a nightly rental property. The landlord testified that the rental property is zoned as a nightly rental property in the city in question.

The landlord testified that she plans on gutting the entire rental property except for the walls and that this work does not require any permits or approvals. The landlord testified that the nature and duration of the renovation is so extensive that it requires the rental unit to be vacant.

The landlord did not enter any documents into evidence.

Both parties agreed that the following text message conversation occurred between the landlord and the tenant between April and May 2018. The landlord asked the tenant if he wanted to extend his lease to which he replied that he did. The landlord told the tenant that he would have to pay \$150.00 per month more to continue his lease. The tenant did not consent to the \$150.00 per month rent increase but told the landlord that he would pay the allowable 4% increase once he received the proper Residential Tenancy Branch forms. The landlord informed the tenant that she would not be renewing his lease but that she would allow him to stay in the rental property until July 1, 2018. The text messages between the landlord and the tenant between April and May 2018 were entered into evidence by the tenant.

The tenant testified that the next time he heard from the landlord was when he received the Four Month Notice on July 1, 2018. The tenant testified that the landlord issued the Four Month Notice in bad faith because he refused to agree to the rent increase.

Analysis

Based on the testimony of both parties, I find that service of the Four Month Notice was effected on the tenant on July 1, 2018, pursuant to section 88 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 49(2)(b) is November 30, 2018. I find that the corrected effective date of the Four Month Notice is November 30, 2018.

Section 49(6)(f) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

Section 1(a) of the *Act*, defines a residential property as a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located.

I find that the property in question, if used for nightly rentals, continues to fit the definition of a residential property under section 1(a) of the *Act*. I find that changing the use of the property from a month to month tenancy agreement to a nightly rental agreement does not qualify as a conversion of the rental property from a residential use to a non-residential use. In this case, if the landlord were to convert the property to a nightly rental, I find that the landlord would continue to rent the property out for residential use.

Section 49(6)(b) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Policy Guideline 2 states that if a permit or approval is not required from the local government, a landlord should obtain written proof from the local government.

The landlord testified that permits were not required for the extensive renovations she planned on completing on the rental property. The landlord testified that approval and or permits for her planned renovations were not required from the local government. The landlord failed to submit any corroborating documents to substantiate the above testimony.

I find that the landlord failed to prove that she planned on renovating the rental property to such a degree that it required the rental unit to be vacant and failed to prove that the renovations she planned on doing did not require permits or approvals.

Policy Guideline 2 states that good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find that the landlord has not proved that that she does not have an ulterior motive for ending the tenancy. The tenant entered text messages into evidence which clearly show that the landlord was attempting to contract out of the *Act* by asking the tenant to pay a rent increase over and above the allowing percentage permitted under the *Act*. I find that the landlord served the tenant with the Four Month Notice because he refused to agree to pay the \$150.00 per month rent increase. I find that the landlord acted in bad faith.

For all of the above listed reasons, I find that the Four Month Notice is of no force or effect and this tenancy will continue until ended in accordance with the *Act*.

Since the tenant was successful in his application, I find that the tenant is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*, from the landlord.

Conclusion

I find that the Four Month Notice is of no force or effect.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: September 10, 2018

Residential Tenancy Branch