Dispute Resolution Services

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 landlord's Four Month Notice to End Tenancy for Renovations or Repairs of Rental Unit (Four Month Notice), pursuant to section 49 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding Package and evidence sent by Canada Post registered mail. The tenant confirmed receipt of the landlord's evidence send by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's Four Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Four Month Notice?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into evidence. The parties confirmed their understanding of the following terms of the tenancy agreement:

- The residential property consists of a detached house, converted into a duplex, with each side of the duplex consisting of two suites, for a total of four rental units.
- This monthly tenancy agreement began June 1, 2012.
- Current monthly rent of $1,555.95 is payable on the first day of the month.
- The tenant paid a security deposit of $650.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that she personally served the Four Month Notice to the tenant on September 22, 2019, which was confirmed by the tenant.

A copy of the Four Month Notice, submitted into evidence, provides: the rental unit address; an effective vacancy date of January 31, 2020; is signed and dated by the landlord; and states the grounds for issuing the Four Month Notice as "perform renovations or repairs that are so extensive that the rental unit must be vacant."

I note that the landlord has used an old version of the form (version 2018/05) which does not include the new requirement to clearly state the length of time the rental unit is required to be vacant. The new version of the form was released in August 2019 (version 2019/08).

Given the landlord has set out in the Planned Work/Details of Work table on page two of the Notice, the time frame for which the rental unit is required to be vacant, I find that the Four Month Notice meets the form and content requirements of the section 52 of the *Act*.

The landlord submitted documentary evidence stating that repair work is required "to correct rainwater leaks into living room windows and ceiling". The landlord testified that her contractor has advised her that will have to open the walls and ceiling to detect and fix the leak, and that he is very certain asbestos would be present given the age of the home. The landlord testified that her contractor requires the rental unit to be vacant to avoid exposing the tenants or their belongings to any asbestos. In support of her testimony, the landlord submitted into documentary evidence an estimate from a "handyman services" company describing the scope of work, stating that the work would require "approximately 6 weeks to complete". I note that there is nothing in the description of work that references asbestos abatement.

The landlord's Four Month Notice indicated that "No permits and approvals are required by law to do this work." The landlord testified that there are no permits required for the repair work.

The tenant confirmed that the repair work to address leaking around the window is necessary, however, he claimed that he contacted the municipality and was informed that permits would be required based on the scope of the work. As such, the tenant disputed the landlord's Four Month Notice on the grounds that permits would be required, and that the notice requires a landlord to have obtained all permits and approvals required by law before issuing the Notice.

Analysis

Section 49(6)(b) of the *Act* provides 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, renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 49(8)(b) of the *Act* provides that a tenant may dispute a Four Month Notice by making an application for dispute resolution within 30 days after the date the tenant receives the notice. In this matter, the tenant received that Notice on September 22, 2019 and filed an Application for Dispute Resolution on September 25, 2019, which is within the time limits under the *Act*.

In this matter, the determinative issue is whether or not the scope of the repair work described by the landlord requires any permits or approvals by law. If so, the notice was issued prematurely, and is invalid.

The parties provided conflicting versions of events in their testimony regarding whether or not permits or approvals were required for the scope of work. The tenant has raised concerns that given his information from the municipality, the fact that the rental property consists of multiple rental units, it would be reasonable to expect that municipal permits or approvals would be required. I find the tenant's concerns reasonable that permits would be required to ensure protection of the occupants of the other rental units from asbestos abatement and to meet requirements for fire separation between shared walls/ceilings between the rental units.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating witness testimony or evidence, the party with the burden of proof has not met the onus to prove the validity of the notice to end tenancy and the notice is cancelled. In this matter, the landlord did not provide any documentation, from the municipality, to support her claims that no permits were required based on the scope of work.

As previously noted, the landlord bears the burden to prove, on a balance of probabilities, that they have met the requirements for issuing the Four Month Notice. After reviewing the totality of the evidence and testimony before me, when weighing these two versions of events, I find that the landlord has failed to provide sufficient evidence to meet this burden. Accordingly, I find that the Four Month Notice is not valid and therefore the Four Month Notice is cancelled and of no force or effect.

As the tenant was successful in his Application, I find that the tenant is entitled to deduct $100.00 from his monthly rent on one occasion in full satisfaction of the recovery of the filing fee from the landlord.

Conclusion

The Four Month Notice dated September 22, 2019 is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the *Act*.

The tenant may deduct $100.00 from his monthly rent on one occasion in satisfaction of entitlement to recover the cost of the filing from the landlord.

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: December 13, 2019

Residential Tenancy Branch