



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL-4M**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- An order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit pursuant to sections 49 and 55.

Both tenants attended the hearing and were represented by a legal advocate, PL. The landlord attended the hearing on his own behalf. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Neither party raised any concerns with timely service of documents.

Issue(s) to be Decided

Should the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

The landlord gave the following testimony. He purchased the property in February 2018 with the tenants already occupying the rental unit. Rent is currently \$1,250.00 per month.

On November 23, 2020, he personally served the tenants with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit. A copy of the notice was provided as evidence by the tenants.

The notice states the landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The landlord did not indicate how many weeks or months the unit was to be vacant. The notice states the planned work is a complete renovation of the entire dwelling. Under details of work, the landlord states that renovations will be too extensive and unliveable for a tenant to reside at.

The notice states no permits and approvals are required by law to do the work.

The landlord testified that he didn't fully understand the notice when he served it upon the tenants. The landlord testified that he didn't believe he needed to provide the permits at the time of the eviction and that it would be the responsibility of the contractor to get them prior to the commencement of the renovation work. The renovations and repairs were handled by his insurer and there's a grey area where insurers do not require permits. The landlord acknowledged during the hearing that he understood there was a fault in his notice to end tenancy regarding the permit issue when the tenants filed their Application for Dispute Resolution to dispute it. Nonetheless, the unit is still in need of repairs.

Analysis

The tenants were served with the notice to end tenancy on November 23, 2020 in accordance with sections 88 and 90 of the *Act*. The tenants filed to dispute the notice within the 30-day time frame prescribed under section 49 of the *Act*, on November 27, 2020.

Residential Tenancy Branch Policy Guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] states:

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is

disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

...

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

The landlord testified at the hearing that he did not have the necessary permits required by law to have the work done prior to serving the Four Month Notice to End Tenancy upon the tenants.

Section 49(6)(b) of the Act states:

*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. (emphasis added).*

As the notice to end tenancy was served before the landlord had the necessary permits and approvals, the notice to end tenancy is cancelled and of no further force or effect.

The tenant's application was successful, and the tenant is entitled to recover the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provision of section 72 of the Act, the tenant is entitled to withhold \$100.00 from one future rent payment due to the landlord.

Conclusion

The notice to end tenancy issued on November 18, 2020 is cancelled and of no further force or effect.

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: February 19, 2021

Residential Tenancy Branch