



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREO WEST GP
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition or Conversion of Property (the "4 Month Notice") pursuant to section 49;
- an order that the landlord provide services or facilities pursuant to the Act, regulations or tenancy agreement pursuant to section 70;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenant was assisted in representing themselves.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated

disputed with or without leave to reapply. In the present case, I find that the portions of the application pertaining to an order that the landlord comply and an order for services or facilities are not sufficiently related to the primary issue of the 4 Month Notice to End Tenancy. Therefore, I sever and dismiss those portions of the tenant's application with leave to reapply.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The tenant began residing in the rental property in 2018. The current landlord assumed this tenancy when they purchased the property from the former landlords. The current monthly rent is \$1,500.00 payable on the first of each month. The landlord served the tenant with a 4 Month Notice dated December 23, 2021 with an effective date of April 30, 2022. The reason provided on the notice for the tenancy to end is that the landlord intends to demolish the rental unit. The tenant filed the present application to dispute the 4 Month Notice on January 21, 2022.

The landlord testified that they are prepared to obtain the necessary permits but require vacant possession of the rental unit for many of the permits and approvals. The landlord submitted into documentary evidence a copy of a Demolition Permit Application for the municipality dated January 5, 2022 and an undated list titled Outstanding Clarification Requests showing the outstanding work to be done for the rental property.

Analysis

Section 49(6)(a) provides that:

(6) 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 do any of the following:

(a)demolish the rental unit;

The issue of permits and approvals required by law is expanded in Policy Guideline 2B which states, in relevant parts:

When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they 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 required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. ...

If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

In the present circumstances the landlord submits that they are unable to obtain the necessary permits until they have vacant possession of the rental property. In support of their position the landlord has submitted some documentary materials including an undated list of outstanding clarification requests and a copy of a permit application.

On a *prima facie* basis it is evident that the landlord does not have the necessary permits and authorization to perform the demolition work cited on the 4 Month Notice. I find the testimony of the landlord and the few pieces of documentary evidence submitted to be insufficient to establish that permits cannot be issued until other conditions are met.

I find the undated page from the municipality to be insufficient to demonstrate that the landlord has completed all steps possible prior to the issuance of the 4 Month Notice. I find the document to be of limited probative value as it is unclear when the document was prepared and contains little detail of the outstanding work. It is unclear whether outstanding status of the issues are a result of the landlord applying and awaiting for vacant possession or if the landlord has not yet taken steps. The first listed item, Initial Avian and Rodent Pest Control Report is shown as being outstanding. The item does not contain comments that there is a requirement for the home to be vacant as other outstanding items note. I am not satisfied that the landlord has completed the steps possible prior to the issuance of the Notice.

Based on the totality of the evidence I am not satisfied that the landlord had the permits required by law at the time that the 4 Month Notice was issued. I further find insufficient evidence to support the landlord's position that no permits were available until other conditions were first met.

Based on the foregoing I find that the landlord has not met their evidentiary onus on a balance of probabilities to establish that there is a basis for the tenancy to end. Consequently, I allow the tenant's applications and cancel the 4 Month Notice. This tenancy continues until ended in accordance with the Act.

As the tenant was successful, they are entitled to recover their filing fee from the landlord. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The portion of the tenant's application seeking an order that the landlord provide services or facilities and an order that the landlord comply with the Act, regulations or tenancy agreement are dismissed with leave to reapply.

The 4 Month Notice of December 23, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: April 22, 2022

Residential Tenancy Branch