



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL, FF

Introduction

This hearing dealt with the tenants' application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether the rental unit needs to be vacant in order for the landlord to repair the rental unit.
2. Award of the filing fee.

Background and Evidence

The parties were in agreement to the following relevant facts. The tenant has been residing in the rental unit since December 1, 2004. The landlord purchased the residential property on January 1, 2008. Monthly rent is currently \$800.00. The tenant rents the main part of house and the landlord's son rents the basement suite in the residential property. The rental unit occupied by the tenant has one bathroom.

On August 27, 2008 the landlord left the Notice in the tenant's mailbox. The Notice has an effective date of November 1, 2008 and indicates the reason for ending the tenancy is that:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Upon enquiry, the landlord made the following submissions during testimony. Water has been leaking in or around the bathtub for many years. The drywall is cracked and the paint is bubbling. In February 2008 the landlord applied new caulking around the bathtub. The landlord intends to substantially renovate or “gut” the bathroom by removing and replacing the bathtub, toilet, sink and vanity. In addition, flooring will be replaced and the drywall repaired. The landlord’s husband intends to do the repair work himself as he is an experienced carpenter. As the landlord’s husband also works and has medical issues, the time needed to renovate the bathroom may exceed 4 weeks and may take even longer if the landlord discovers rot or mould in other areas. The landlord’s husband also expressed concern about being liable for the personal property left in the rental unit during the renovation if the tenancy were to continue while the renovation is in progress.

Upon inquiring, the landlord confirmed that there are no visible signs of water damage or mould appearing on the walls of the adjacent rooms; however, it was the landlord’s testimony that after many years of water leaking it is likely there is extensive rot or mould behind the drywall and/or under the flooring. Upon enquiry, the landlord confirmed that the walls of the bathroom and the bathroom flooring have not been opened up to investigate the extent of the potential water damage.

The tenant testified that the tenant had previously offered to stay with relatives for 3 to 4 weeks during the month of December, as she will be on maternity leave at that time, in order for the landlord to complete the repairs to the bathroom but this offer was refused by the landlord. The tenant submitted that the landlord is motivated to raise the monthly rent or is ending the tenancy because she is about to have a baby. The tenant has

contacted contractors who advised her that the work the landlord intends to complete is a two week job. The tenant testified that the floor in the bathroom is not soft or spongy. The tenant submitted a considerable amount of evidence including photographs of the rental unit and the exterior of the property. The tenant's evidence also included an email the tenant sent the landlord asking for attention to certain maintenance issues, the same day the landlord issued the Notice. The tenant confirmed during the hearing that she will empty the personal contents of the bathroom and temporarily vacate the rental unit in order to permit the landlord to perform the necessary repairs and retain her tenancy.

The landlord's son lives in the basement suite in the lower part of the house. Upon enquiry, he testified that he has not observed any visible signs of water damage in the ceiling located below the tenant's bathroom. The landlord's son disputed the tenant's allegation that the tenant having a baby is an issue.

The parties were in agreement that building permits were not required by the City of Kamloops since the repair work to be done to the bathroom is not structural.

Analysis

A landlord has an obligation to repair and maintain a rental unit so that it complies with health, safety and housing standards required by law and that the rental unit is fit for occupancy. It is not in dispute that there is evidence of water damage to the bathroom walls in the rental unit. The landlord intends to address the repairs to the bathroom by "gutting" the bathroom and essentially rebuilding it. Although the parties attempted to resolve the issue before appearing at the hearing, their attempts were unsuccessful and now it is before me to determine whether the landlord has met the criteria, as set out by the legislation, to end the tenancy in order to complete the necessary repairs. The reason given to end the tenancy on the Notice is based upon section 49(6)(b) of the Act which provides:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

[my emphasis]

As the parties were in agreement that the proposed renovation does not require permits, I must determine whether the landlord has met the remaining criteria of section 49(6) which I characterize as a two part test: first, that the repair or renovation requires the rental unit to be vacant; second, that the landlord has shown a “good faith” intention to renovate or repair the rental unit.

The first test, that the repair or renovation requires the rental unit to be vacant, has recently been an issue before The Supreme Court of British Columbia in *Berry v. British Columbia*, 2007 BCSC 257. The court found that the requirement that a rental unit be vacant has two dimensions that must be satisfied in order to determine that the tenancy must end:

1. As a practical matter, does the unit need to be empty for the renovations to take place? The fact that renovations might be more easily or economically undertaken if the unit was empty is not sufficient. To warrant an end to the tenancy, renovations must only be possible if the unit is unfurnished and uninhabited.
2. The landlord must establish that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the tenancy.

The court also noted that even if the unit needs to be vacant for only a short time, it is irrational to think that a landlord could terminate the tenancy.

Generally, where a landlord decides to completely renovate the only bathroom in a rental unit, the rental unit would not normally be inhabitable during the period of renovation. I find that the landlord's expectation that the renovation take approximately 4 weeks is based on the landlord's husband doing the work on his own time schedule, as his health permits. This satisfies me that the landlord wants 4 weeks of vacancy to perform the work themselves as this may be the easier or more economical way to accomplish the renovation. However, as the court found, it is not sufficient to end the tenancy because it is more economical or easy for the landlord to accomplish the renovation in that manner. The tenant submitted that other contractors she contacted indicated the renovation could be done in approximately two weeks. Since the landlord did not dispute that allegation, I find it more likely than not that the renovation could be completed in less than 4 weeks if the landlord's husband did not do the repairs. Therefore, the landlord's position fails to satisfy the first dimension described above.

Since the tenant has previously offered and confirmed that she can and will vacate the rental unit for up to 4 weeks while on maternity leave in order for the landlord to accomplish the necessary repairs or renovation, I find that the necessary emptiness of the rental unit may be accomplished without ending the tenancy. I do not accept the landlord's position that the entire tenant's personal belongings need to be removed from the rental unit in order for the landlord to renovate the bathroom. My reference to the necessary emptiness is in relation to the tenant's belongings being removed from the bathroom and the tenant temporarily vacating the rental unit for up to 4 weeks. Therefore, I find that the landlord has not sufficiently demonstrated that the necessary emptiness can only be achieved by ending the tenancy.

Since I have found that the landlord has not sufficiently demonstrated that the rental unit needs to be vacant in order to complete the necessary repairs and that the only way to achieve the necessary emptiness is by ending the tenancy, the landlord has failed the

first test that the rental unit is required to be vacant in order to complete the repairs. Accordingly, I set aside and cancel the Notice to End Tenancy without further exploring the landlord's good faith intention with respect to ending the tenancy. The effect of this decision is that the tenancy shall continue.

As this tenancy continues, it is expected that the parties will negotiate mutually agreeable dates for the tenant to temporarily empty the bathroom and stay in alternative accommodation for up to 4 weeks in duration in order for the landlord to accomplish the necessary repairs or renovations to the rental unit's bathroom.

Although the landlord expressed concern over additional damage to structure of the rental unit due to rot or mould, I found the landlord's determination premature. Should the landlord discover extensive damage, thus necessitating further repair to the structure of the building, the landlord is at liberty to obtain the necessary permits and issue another Notice to End Tenancy where appropriate.

As the tenant was successful with this application to cancel the Notice issued on August 27, 2008, I award the filing fee to the tenant. The tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the landlord must consider the rent paid in full. Alternatively, the landlord may directly pay the tenant \$50.00 within 30 days of the date of this decision in satisfaction of this award.

Conclusion

The Notice to End Tenancy issued August 27, 2008 is set aside and cancelled with the affect that this tenancy continues. The tenant is entitled to recover the filing fee from the landlord.

October 31, 2008

Date of Decision