



Dispute Resolution Services

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

Decision

Dispute Codes:

CNL

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated January 27, 2009 and effective March 31, 2009. The landlord, the tenant and the tenant's representative appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The tenant was seeking to cancel the Two-Month Notice for Landlord's Use. Therefore the issues to be determined based on the testimony and the evidence are:

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances?
 - Has the landlord furnished proof that it is necessary for the unit to be vacant to complete repairs?
 - Has the landlord furnished proof that it has obtained all of the necessary permits and approvals?
 - Has the landlord furnished proof that the good faith requirement has been met?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was warranted and supported under the Act.

Background and Evidence

The landlord testified that the building is older and that the interior of the unit dates from the period. The landlord testified that there was a plan to embark upon a variety of cosmetic upgrades to this suite and another suite as well, that are extensive enough to require that the unit be vacant. However these repairs and improvements do not necessitate any building permits or municipal approvals. The landlord did not submit any documentary evidence in regards to the renovation plan but gave verbal testimony that the anticipated work will include counters, flooring and tiling. In answer to the question of what specifically would prevent the tenant from remaining during the duration of the project, the landlord testified that it would be difficult for an occupant to endure all of the disruption associated with the construction and installation. In regards to whether any consideration was given to making alternate arrangements with the tenant or the possibility that both parties could cooperate to accomplish the renovations, while still preserving the tenancy, the landlord stated that this possibility was never contemplated nor pursued. The landlord could not speculate whether or not the owner would ever be willing to consider this option.

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord's Use which indicated 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.*" The tenant testified that he does not agree that the tenant should have to move and decided to dispute the notice. The tenant testified that the unit is not in a state of deterioration that would necessitate immediate or urgent intervention and that the tenant would not be adverse to remaining in the unit while the renovations were underway or even negotiating other creative arrangements such as alternate accommodation for a period of up to one month in order to permit the landlord to finish the upgrades unencumbered. The tenant testified that alternate measures could have been explored, but that the landlord made no effort to do so and resorted solely to issuing the Notice to permanently end the tenancy.

The tenant testified that the landlord's good faith intention was in question and pointed out that the landlord had not successfully established an absence of an ulterior motive for ending this long-term tenancy. Moreover according to the tenant, the landlord has also failed to prove that there is an absolute necessity for the unit to be vacated to begin or to complete the work. The tenant contended that ending the tenancy to make the renovation work more convenient would not suffice to meet the threshold of the test to comply with section 49(6) and the tenant pointed out that higher courts have made this clear. On the basis of the above, the tenant requested that the Two-Month Notice to End Tenancy for Landlord's Use be cancelled.

Analysis

On January 28, 2009, the tenant was given a Two-Month Notice by the landlord, ending this tenancy effective March 31, 2009 and on January 28, 2009, the tenant filed an Application for Dispute Resolution, seeking an order cancelling the Notice.

The Notice was given under section 49(6)(b) of the *Act*, on the grounds that the landlord has all necessary permits and approvals required by law, and intends in good faith repair the rental unit in a manner that requires the rental unit to be vacant.

. I have been designated under Section 61 of the *Residential Tenancy Act* to conduct a hearing regarding this application to decide whether the Notice should be aside and the tenancy to continue, or whether the Notice should be upheld and the tenancy therefore to end on the effective date of the Notice. I find that the tenant's position is clear:

1. The landlord is not proceeding in good faith, a requirement under this section of the Act; and;
2. The unit need not be vacant and tenancy ended for the landlord to proceed with the renovation work and;
3. The landlord does not have permits required by law to complete the renovation nor has the landlord proven that there is no requirement for permits.

I find that the landlord's testimony and evidence did not suffice to defend against the above allegations. Even if I could accept in full the verbal testimony of the landlord, I find that neglecting to submit supportive evidence to establish the precise nature and extent of the work, including the expected duration, the sequence of projects or the status of the initial preparations, there is no basis for me to conclude that the unit must be vacant. I find that the landlord did not reveal whether contractors were involved and no written reports or nor work estimates were placed in evidence. I also note that nothing was submitted to verify what the municipality's position was on the issue of permits and approvals to confirm that the matter was even discussed with city inspectors. I find that the landlord's testimony was deficient in establishing support for the landlord's position that this project could not proceed without ending the tenancy.

I find that, since the burden of proof was squarely on the landlord to satisfy the criteria under the Act, it was incumbent on the landlord to fill in gaps in the information calling into question the need to end the tenancy. I find that the landlord has not sufficiently met this burden.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord that the criteria under section 49(6) has been met in the face of the challenge put forth by the respondent.

Accordingly, I find that the tenant's application to have the notice cancelled must be granted. I hereby order that the Two-Month Notice to End Tenancy for Landlord's Use issued on January 27, 2009, is cancelled and of no force nor effect.

February 2009

Dispute Resolution Officer