



Dispute Resolution Services

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

Decision

Dispute Codes: CNL

Introduction

This hearing dealt with the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties were represented at the hearing and were provided an opportunity to be heard and respond to the other parties' submissions.

Issues:

1. Are there grounds to set aside and cancel the Notice to End Tenancy?

Background

Upon hearing undisputed testimony of the parties, I make the following findings. The tenancy commenced in September 2007. The tenant currently pays rent of \$647.00 per month. The landlord's agent personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on January 27, 2009. The Notice has an effective date of March 31, 2009 and indicates the reason for ending the tenancy is:

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

The landlord testified that the residential property is a 62 unit building. Approximately 50 of the units have been renovated to date and the tenants of the remaining 12 units

were served with Notices to End Tenancy. It is the landlord's intention to renovate the remaining 12 units at the same time to achieve uniformity within the building. The landlord explained that the materials have already been purchased and the labour has been arranged. The landlord intends to replace the carpeting with laminate flooring, replace linoleum flooring with tile, and replace the countertops and cupboards. The landlord explained that vacant occupation is necessary to complete the renovations since the toilet has to be disconnected to retile the floor. The landlord submitted that the renovations will require a vacancy of approximately four weeks. The landlord acknowledged that no permits have been obtained because the renovations are cosmetic.

The tenant testified that the kitchen cupboards and countertops in the kitchen were replaced just before her tenancy commenced and that everything is functioning in the rental unit. The tenant provided photographs of her rental unit as evidence for the hearing. The tenant submitted that the landlord is motivated to perform renovations to raise rents. The tenant called into question the landlord's good faith intention, the need for uniformity in the building, and the need for vacant occupation of four weeks. The tenant pointed out that the landlord has offered to permit the tenant to return to her rental unit after the renovations are complete at the increased rate of \$750.00 per month. Finally, the tenant can live with her parents for a few days at a time while the plumbing is disconnected.

The landlord acknowledged offering the tenant a new tenancy at \$750.00 per month; however, the landlord pointed out that \$750.00 is a discounted rate as new tenants are paying between \$800.00 and \$825.00 per month for renovated units. The landlord refuted the tenant's claims that he has a bad faith intention by explaining that a \$10,000.00 renovation takes years to recoup at an increased rate of \$100.00 per month. The desire to achieve uniformity is for ease of advertising units available for rent and the

landlord's estimate that renovations will take four weeks is based on the length of time it has taken to renovate other units in the building.

Findings and Analysis

Giving a Notice to End Tenancy for Landlord's Use of the Property requires that the landlord satisfy several tests. Specifically, a Notice to End Tenancy given under section 49(6) of the Act requires the landlord to show that the renovations being proposed require vacant occupancy of the rental unit. In addition the landlord must also serve the notice with good faith.

Section 2 of the *Residential Tenancy Policy Guidelines Manual*, provides the following definition and test of "good faith":

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

I am not satisfied that the landlord has issued this Notice to End Tenancy in an attempt to retaliate against the tenant. The landlord has the right, as a property owner, to both maintain and improve his property. Based on the submissions of the parties I am satisfied that the landlord is seeking possession of the rental unit for this reason and believes that vacant occupancy is necessary to complete these renovations.

I am also satisfied that the landlord does not require any approvals or permits to complete this work. Not all renovations or work require permits from the municipality and in the circumstances before me the landlord has investigated this issue to my satisfaction.

The remaining issue to determine is whether vacant occupancy is required for the work to be completed. From the submissions of the landlord it is clear that the tenant's ability to use the bathroom would be significantly affected when the bathroom plumbing is disconnected. The tenant has indicated a willingness and capacity to accommodate the landlord's requirements for temporary vacant occupancy while the bathroom is being renovated.

The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

“[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use “vacant” to mean “empty”. Thus, the arbitrator must determine whether “as a practical

matter” the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in **Allman**. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

While I appreciate that it may be easier and more economical for the landlord to complete the renovations while the rental unit is vacant for approximately four weeks, the test the landlord must satisfy is that there is no possible way to carry out the renovations unless the unit is vacant for more than brief periods of time. It is irrational to think that section 49(6) of the Act could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a “loophole” for landlords.”

I consider a brief period of time to be a few days. The landlord had indicated that vacant possession was necessary because the toilet would need to be removed while the bathroom tiling is in progress. I agree that the rental unit would be uninhabitable while the bathroom plumbing is disconnected. However, practically speaking, if the tenant is willing to vacate the unit while it is necessary for the plumbing to be

disconnected, then an end to the tenancy is not required. Although the entire renovation project may be expected to take approximately four weeks to complete, I do not find that the landlord proved that the toilet needs to be disconnected for more than a few days. I also do not find that the landlord satisfied me that installation of new flooring and cabinets can only be achieved if the unit is empty for more than brief periods of time.

In light of the above findings, I am not satisfied that the landlord has met the requirement of showing that the renovations by their nature are so extensive as to require the unit to be vacant. I accept that the tenant will not be able to remain the rental unit during the temporary period the bathroom plumbing is disconnected in order to re-tile the bathroom; however, since the tenant is willing and able to accommodate the landlord's need to disconnect the bathroom plumbing for brief periods of time I do not find that this tenancy needs to end. Therefore, I grant the tenant's application and cancel the Notice to End Tenancy.

Conclusion

I find that the evidence before me does not establish that the renovations to be completed on the rental unit require vacant possession. I accept the tenant's application and Order that the Notice to End Tenancy dated January 27, 2009 be cancelled. This tenancy shall continue.

March 31, 2009

Date of Decision

Dispute Resolution Officer