

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNL, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the Tenant and the Landlord prior to the Hearing. All parties gave affirmed evidence and this Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Tenants’ application under Section 48(8) of the Act, to cancel a Notice to End Tenancy for Landlord’s Use and under Section 72(1) of the Act, to recover the cost of the filing fee from the Landlord.

1. Does the Landlord have all necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant?
2. Does the Landlord intend in good faith to carry out the renovations or repairs?
3. Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

Service

The Landlord mailed the Notice to End Tenancy dated February 9, 2009, to the Tenant by registered mail, to the Tenant’s residence, on February 9, 2009. The Landlord

provided a Canada Post tracking number. The Tenant admitted service of the Notice to End Tenancy.

The Tenant personally served the Landlord's agent with the notice of hearing package on February 25, 2009. The Landlord's agent admitted service of the notice of hearing package.

The parties agreed that they received each other's evidence packages.

Tenant's evidence

The Tenant's agent testified that:

1. the Tenant believes the Landlord is trying to end the tenancy for reasons other than to make major renovations to the rental unit;
2. the renovations contemplated by the Landlord do not require that the Tenant vacate the rental unit;
3. the Tenant has advised the Landlord that he is prepared to agree to temporarily move out of the rental unit, if his absence is required in order to complete the renovations, but the Landlord will not entertain such an arrangement;
4. the Tenant believes the Landlord is financially motivated to end the tenancy because the Tenant is paying 30% less in rent than the comparable units in the area would rent for;
5. the Landlord has not provided details regarding exactly what renovations will be taking place, when they will be taking place, and whether the Landlord has the required permits to undertake the renovation;
6. the Landlord's contractor has not been in to inspect the rental unit in order to determine what work needs to be done and to provide cost estimates to the Landlord;
7. the Tenant has lived in the rental unit for 20 years, during which time there has been no painting, replacement of carpet, or any upgrades to the rental unit.

Landlord's evidence

The Landlord's agent testified that:

1. the Landlord denies there is any reason for issuing the Notice to End Tenancy other than for the purposes stated in the Notice to End Tenancy;
2. it is necessary for the Tenant to vacate the rental unit in order for the Landlord to carry on the renovations, particularly the new flooring, because the amount of furniture and material the Tenant owns makes it difficult to maneuver in the rental unit;
3. the Owner of the rental unit inspected the unit and was very concerned about the lack of cleanliness in the unit and the possible damage that may be occurring to the rental unit, as the Tenant has not vacuumed, dusted or cleaned the unit since he moved in 20 years ago;
4. the Owner of the rental unit intends to replace the flooring, paint and possibly renovate the bathrooms;
5. the Owner of the rental unit may decide to make other renovations to the rental unit once the Tenant has vacated the suite;
6. the Landlord has not yet approached the Strata Corporation to obtain permission to re-floor the rental unit;
7. it is true that comparable rental units in the area command monthly rents in the \$1,250.00 to \$1,300.00 range, however after the rental unit has been renovated, the Owner intends to either sell the rental unit or occupy the rental unit, and will not be renting it out to any other tenant; and
8. the Landlord's agent believes that the Landlord has the right to renovate its own property.

Analysis

Has the Landlord proven, on the balance of probabilities, that it intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant?

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, and the Tenant has questioned the "good faith" intent of

the Landlord, the burden is on the Landlord to establish that it truly intends to do what the Landlord indicates on the Notice to End Tenancy. The Landlord must establish that it does not have an ulterior motive for ending the tenancy as its primary motive.

I find that all items in the Landlord's list of improvements are items that could be completed with the Tenant remaining in the rental unit. The furniture and boxes could be moved to another location while the floors are redone. Painting the walls does not require the Tenant to move out. Both parties have indicated that there are two full bathrooms in the rental unit. One bathroom could be renovated at a time, leaving the other available for the Tenant's use.

In the Landlord's Notice to End Tenancy, it indicates (by ticking a box on the form):

“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 Landlord has not approached the Strata Corporation for permission to change the carpeting or re-floor the unit. The Landlord's contractor has not yet inspected the rental unit to provide estimates to the Landlord.

I accept that there are renovations required to the building. The rental unit has not been painted or re-carpeted for 20 years. However, based on the evidence and oral testimony of the Landlord's agent and the Tenant, I find that the Landlord has not met its burden of proof that it intends to make major renovations to the rental unit which require the Tenant to vacate the rental unit in order for those renovations to be made. The Tenant has offered to temporarily vacate the rental unit in order for the floors to be done, should that be necessary.

Berry v. British Columbia (Residential Tenancy Act, Arbitrator) (2007), 155 A.C.W.S. (3d) 1208, 2007 BCSC 257 (B.C.S.C.), states as follows:

The requirement that the renovations to be undertaken in a manner that requires the rental unit to be vacant has two dimensions:

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 were 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.

In this case, the court noted the Dispute Resolution officer's conclusion that the premises would only need to be vacant for three days. The court held that it was irrational to think that a landlord could terminate a tenancy because a very brief period of emptiness was required.

Furthermore, the Landlord, in its evidence, makes reference to the Tenant's lack of cleanliness. In a letter dated March 9, 2009, the Landlord's agent writes, in part:

"The owner was shocked to see the condition of his unit (pictures attached) the unit is filthy with inches of dust, dirt and grime everywhere and the smell of dust and mold is stagnant. The owner was worried about the future value of his unit and health risks associated with the amount of dust and dirt in his unit. The owner does not wish for the current tenant to move back in after these renovations for the obvious reason that he does not wish for his unit to return to the current condition."

The Tenant's agent questioned whether the Landlord had ulterior motives in issuing the Notice to End Tenancy. The Landlord's testimony and evidence was contradictory with respect to its intent to perform renovations that require the rental unit to be vacant as its primary motive.

I therefore cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant has been successful in his application to cancel the 2 Month Notice to End Tenancy and is therefore entitled to recover the \$50.00 filing fee from the Landlord for the cost of this application.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property, effective April 30, 2009, is cancelled and this tenancy will remain in full force and effect.

Pursuant to Section 72(2)(b) of the Act, I order that Tenant is entitled to apply the \$50.00 towards next month's rent.

April 16, 2009
