



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPL, CNL, MNDC, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed an application to dispute a two month Notice to End Tenancy for Landlord's Use of the Property and a monetary claim related to damage or loss under the *Act* due to mental stress experienced due to the actions of the landlord's agent. The landlord filed a cross application seeking an Order of Possession based on a one month's Notice to End Tenancy for Cause and a request to have the locks changed on the rental unit.

Preliminary Issues:

The first issue was the tenant's failure to serve the landlord with notice of his application and hearing within the three (3) days required by section 59 of the *Act*. It was determined that the tenant used three separate addresses for the landlord or agents of the landlord. All the addresses were allegedly publicly published. The agent for the landlord confirmed that he was served with notice as of June 15, 2009. Although the tenant failed to serve the documents within the three (3) days required I decided to proceed with the application. I find that the landlord has not been unduly prejudiced as a result of the delay and has subsequently filed a separate application and had sufficient opportunity to respond to the tenant's application.

The second issue related to the landlord's application seeking an Order of Possession and an Order to change the locks on the rental unit based on a one month Notice to End Tenancy for Cause. As there was no one month Notice to End Tenancy for Cause served this application would normally be dismissed; however, I accept that the landlord intended to apply based on a two Month Notice to End Tenancy for Landlord's Use of the Property and that the tenant understood that the application was related to the correct notice. As a result I have amended the landlord's application to seek an Order of Possession based on the correct notice to end tenancy.

Issues(s) to be Decided

Is the two month Notice to End Tenancy for Landlord's Use of the Property valid?

Is the tenant entitled to compensation due to mental stress?

Background and Evidence

This tenancy began February 1, 2007 for the monthly rent of \$400.00 and a security deposit of \$200.00. The current landlord purchased the building around June 2008. Although the tenancy agreement indicates an addendum with twenty (20) additional terms neither party had a copy of those terms.

The tenant was served with a two (2) month Notice to End Tenancy for Landlord's Use of the Property on May 22, 2009. Section 49 of the *Act* provides that a landlord may end a tenancy for their own use and specifically in this case for the reason that:

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:

- renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord submitted that the rental unit is approximately thirty (30) years old and has been poorly maintained by the previous owners. The current landlord has been working to complete major renovations and upgrades to bring the rental unit to current code. The landlord's agent stated he believed the rental unit needs to be vacant for the following reasons:

- Previous inspections indicate that there may be significant issues with the electrical system in the unit which could be a significant safety issue;
- That there is a moisture and mould issue in the bathroom which may require the walls to be opened and all installation removed;
- That there may be plumbing issue in the wall of the living room which may require the walls to be removed, installation removed and plumbing completed;
- That there is a systemic issue with the plumbing in the main floor of the rental building that has caused flooding in other units (but not this rental unit); and
- The tenant has failed to cooperate or allow access to the rental unit to investigate the seriousness of these alleged problems.

The landlord also presented a witness who provided affirmed evidence. The witness stated that she has been told that there are mould issues in the rental unit and that there is a possibility that the mould could extend out into the kitchen walls. The witness also provided evidence respecting the conduct the tenant and issues about late

payment of rent by the tenant. However, these issues were not relevant to the issues at dispute.

The landlord's agent also made submissions about the reasonable grounds that exist for issuing a one month Notice to End Tenancy for Cause and appeared to be arguing that an Order of Possession should be granted related to these issues. The landlord also alleged that the tenant had assaulted him physically previously and that there is no way for the parties to interact in an effective or cooperative manner.

The tenant stated that the landlord has failed to provide any evidence to support the notice to end tenancy. The tenant stated that there is no evidence of mould or repairs that are required in the rental unit or that would render the rental unit as unsafe. The tenant questioned the good faith of the landlord and felt that there were ulterior motives for why the landlord was seeking an eviction.

The tenant also requested compensation for alleged mental stress that he has experienced as a result of receiving this notice to end tenancy from the landlord. The tenant submitted that he has been shocked and disturbed resulting in loss of sleep and an inability to concentrate. The tenant submitted that he has missed work as a result.

The landlord responded by alleging that the tenant's loss was due to him losing his job for reasons unrelated to his tenancy. The landlord also alleged that the tenant has made complaints about the state of the electrical outlets in the rental unit but will not cooperate in letting the landlord investigate the issue.

The tenant submitted that he lost his previous job in March 2009 and that it has nothing to do with his application. The tenant also argued that the landlord has provided no evidence to support his allegations that he is uncooperative or has prohibited the landlord from repairing or investigating required repairs in the rental unit.

Analysis

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*.

I grant the tenant's application in part and find that the two month Notice to End Tenancy for Landlord's Use of the Property should be set aside. As a result I also find that the landlord's application seeking an Order of Possession based on this notice is without merit and I dismiss it.

The landlord has failed to provide any reasonable ground or any evidence to support the notice. The landlord can only speculate about the potential repairs required in the

Residential Tenancy Branch
Ministry of Housing and Social Development

rental unit since no investigations have been carried out. If there was any basis for repairs from previous investigations, the landlord failed to provide those reports as evidence.

Even accepting that there will likely be some repairs that need to be completed in the rental unit the landlord's agent has failed to provide any evidence to substantiate his speculation that those repairs will require vacant possession.

The British Columbia Supreme Court addressed the issue of the requirement of 'vacant possession' 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.

Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) 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 am not satisfied that the landlord has met the requirement of showing that the renovations by their nature are extensive to the point of requiring the unit to be vacant. This tenancy will continue with full force and effect.

Next I have considered the tenant's application for mental stress related to his apparent emotional response to receiving this notice to end tenancy. I find that the tenant's claim

is without any merit and has no basis. The tenant has not provided any medical evidence to confirm that he suffered any mental stress as a result of the service of a notice to end tenancy. Further, the landlord has the right to serve a tenant notice to end tenancy under the *Act* and it would only be considered grounds for stress if it was repeated and wilful. The tenant exercised his right to dispute the notice and it has been set aside.

Conclusion

The landlord's application is dismissed without leave to re-apply. The tenant's application is granted in part. The two month Notice to End Tenancy for Landlord's Use of the Property is set aside and the tenancy will continue with full force and effect. However, I have determined that the tenant's monetary claim for compensation due to mental stress is unsupported and I dismiss this portion of the tenant's application.

As the tenant has been partially successful I Order that the tenant may recover the \$50.00 filing fee paid for this application from the landlord by deducting from the next month's rent.

Dated: July 13, 2009.

Dispute Resolution Officer