

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNL; MNDC; LRE; OLC; FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Landlords Use; a Monetary Order for compensation for damage or loss; an Order that the Landlords comply with the Act or regulation; to suspend or set conditions on the Landlords' right to enter the rental unit; and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided by both parties prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the Notice to End Tenancy issued July 28, 2009, be cancelled?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Should the Landlords be ordered to comply with the Act and regulation?
- Should conditions be set on the Landlords' right to enter the rental unit?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlords?

Background and Evidence

Facts on which the parties agree:

- The tenancy started in July, 2002.

- Monthly rent is currently \$675.00 per month. The Tenant paid a security deposit in the amount of \$325.00 when she moved into the rental unit.
- The Landlords served the Tenant with a 2 Month Notice to End Tenancy for Landlords Use on July 28, 2009, by handing the Notice to the Tenant at the Tenant's residence.
- The Tenant has paid rent for the month of September, 2009.

The Landlord and his agent gave the following testimony and evidence

The Landlords have all the necessary permits and approvals required by law to make renovations to the rental unit. The Landlords provided copies of:

- the Building Permit, dated June 29, 2009;
- the Electrical Permit, dated June 30, 2009; and
- the Gas Installation Permit for replacement of a water heater and furnace, dated June 12, 2009;

The nature of the work to be done requires that the rental unit be vacant. A list of the work to be done includes:

- New floors in the bathroom and kitchen, including removing several layers of flooring and laying new subfloors;
- New plumbing, bathtub and sinks for the bathroom and kitchen;
- Replacement of windows and doors,
- Replacement of drywall, and painting;
- Replacement of furnace and hot water tank;
- Upgrading electrical main panel;
- Inspecting all receptacles and switches, and installing new wiring for a bathroom fan;
- Installing GFI receptacle in the bathroom; and
- Replacing or repairing ceiling light fixtures on three floors.

The power to the rental unit will have to be turned off in order to perform the electrical services. The water to the rental unit will have to be shut off in order to perform the plumbing services. The rental unit will be without kitchen and bathroom facilities for a period of time. The renovation will take at least 6 to 8 weeks to complete, provided there is no water damage or mold in the kitchen or bathroom. All contents will have to be removed and the rental unit will be unsafe to live in.

The Landlords provided statements from the electrical contractor, plumber, heating services man and installation service company to substantiate his claim.

The Tenant gave the following testimony and evidence

The Landlords renovated the other three rental units without having to give the other tenants Notices to End Tenancy. In particular, one rental unit was not extensively renovated. The Tenant initially offered to move out of the rental unit and store her possessions at her own expense, but withdrew her offer when it became apparent that the renovations could take considerably longer than 6 to 8 weeks.

The Tenant believes the Landlord does not intend to undertake major renovations, and is trying to get rid of the Tenant because of a previous Dispute Resolution Hearing where the Landlords were unsuccessful. There have been three Notices to End Tenancy issued since then. The Landlords have done little to no maintenance at the rental unit since the Tenant moved in on July 1, 2002.

The Tenant believes the Landlord would like to end the tenancy so he can charge more rent for the property.

One of the Landlords has been harassing the Tenant since May, 2007, when the Tenant disputed an illegal rent increase. Examples of harassment include provoking the Tenant's children by speaking badly of their mother; taking pictures inside the rental unit when she was not home; and generally being rude and argumentative towards the Tenant. The Tenant applied for \$100.00 rent abatement per month from June, 2007 to July, 2009 because of her loss of peaceful enjoyment of the rental unit due to the Landlord's harassing behaviour towards the Tenant.

The Landlord and the Landlord's agent gave the following reply

The Landlord did not give two of the other tenants Notices to End Tenancy, because he waited until the tenants moved out of the rental units before commencing renovations. He did provide one of the other tenants with a Notice to End Tenancy, but that tenant did not dispute it and moved out of the rental unit.

The Landlord has provided maintenance on the rental unit over the past seven years. He has not raised the rent on a yearly basis, as he is entitled to do, and in fact has raised it only once in seven years in the amount of \$25.00.

The Landlord disputes that he has been harassing the Tenant. He entered the Tenant's home after giving 24 hour written notice of his intent to do an inspection. He was taking pictures in the rental unit in preparation of making plans for renovations. He has tried to maintain a cordial relationship with the Tenant and her allegations take him by surprise. She has made no written complaint to the Landlord outlining her concerns and advising him that she was feeling harassed.

Analysis

Have the Landlords proven, on the balance of probabilities, that they intend 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 Landlords have issued a Notice to End Tenancy for Landlord's Use, and the Tenant has questioned the "good faith" intent of the Landlords, the burden is on the Landlords to establish that they truly intend to do what the Landlords indicate on the Notice to End Tenancy. The Landlords must establish that they do not have an ulterior motive for ending the tenancy as their primary motive.

The Landlords have provided considerable documentary evidence to support their claim that they have all required permits and approvals and are undertaking extensive renovations in such a manner that the Tenant must vacate the rental unit.

Based on the testimony and evidence of both parties, I find that the Tenant has not proven her claim that the Landlord has an ulterior motive for ending the tenancy.

Therefore, the Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to re-apply. The Notice to End Tenancy issued July 28, 2009 is upheld and the tenancy ends on September 30, 2009. The Landlord requested an Order of Possession and I make that Order, effective 1:00 p.m, September 30, 2009.

Has the Tenant established that she is entitled to: a monetary order for compensation or loss in the amount of \$2,560.00; an order that the Landlords comply with the Act; and an order setting conditions of the Landlords' right to enter the rental unit?

I do not find that the Tenant has proven her claim of harassment against one of the Landlords and this portion of her claim is dismissed. However, the Tenant is entitled to one month's free rent in accordance with Section 51 of the Act. The Tenant has paid rent for the month of September and therefore I am providing the Tenant with a monetary order in the amount of \$675.00. If the Landlords fail to pay the Tenant \$675.00 by 1:00 p.m. on September 30, 2009, the Tenant is at liberty to serve the Landlords with the enclosed monetary order. If the Landlords do pay the Tenant in accordance with Section 51(1) of the Act, the enclosed monetary order becomes of no force or effect.

The Tenant has not been successful in her application to cancel the Notice to End Tenancy and therefore her applications for an order that the Landlords comply with the Act, and an order setting conditions of the Landlords' right to enter the rental unit, are dismissed without leave to re-apply.

The Tenant has not been successful in her application and is not entitled to recover the cost of the filing fee from the Landlords.

Conclusion

Pursuant to Section 55 of the Act, I hereby provide the Landlords with an Order of Possession, effective 1:00 p.m., September 30, 2009. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia for enforcement as an Order of that Court.

I hereby grant the Tenant a Monetary Order in the amount of \$675.00 against the Landlords. If the Landlords pay the Tenant the amount of \$675.00 by 1:00 p.m., September 30, 2009, this Order becomes of no force or effect. In the event the Landlords do not pay the Tenant the amount of \$675.00 on or before 1:00 p.m., September 30, 2009, this Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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.

Dated: September 22, 2009