

Decision

Dispute Codes: CNL

Introduction

This hearing dealt with an application by the tenant for cancellation of the landlords' notice to end tenancy for landlord's use of property. Both parties participated in the hearing and gave affirmed testimony.

Issue to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

A copy of the written tenancy agreement is not in evidence for this month-to-month tenancy which began approximately 10 years ago. Currently, rent is \$539.00 and is payable in advance on the first day of each month. It is understood that a security deposit of \$250.00 was collected at the outset of tenancy.

The landlords issued a 2 month notice to end tenancy for landlord's use of property dated May 28, 2010. The tenant disputed the notice by filing an application for dispute resolution on June 7, 2010.

The date shown on the notice by when the tenant must move out of the unit is July 31, 2010. The reason shown on the notice for its issuance is as follows:

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.

Evidence submitted by the landlords indicates that in relation to the scope of the work planned, a building permit is not required.

In their documentary evidence the landlords describe conditions in the building and recent improvements made, in part, as follows:

[The building] is a three story, 39 suite building, constructed in the mid 1970's with some suites receiving floor covering and paint upgrades in the mid 1980's.

In the last year we have renovated [4 different suites]. All of these suites needed to be completely gutted with individual suite costs in excess of \$10,000.00. [The tenant's] suite # 109, was identified as one of the suites that required renovations as sink drains are worn out and held together with silicone, the cabinets and countertops are damaged and require replacement for health and safety reasons, complete re-paint, removal and replacement of floor coverings (still original shag carpet), trim and mouldings and in [the tenant's] own words, "the bedroom is so dirty and gross)...

The current owners have been upgrading the building as well over the past couple of years including elevator upgrades (over \$100,000.00) new paint and carpet in all hallways and common areas, replacement of hot water tanks (\$12,000.00) fire alarm system and panel (\$15,000.00) and numerous other upgrades and repairs.

[The tenant] was advised verbally in December that the renovations of suites would be continuing and further, that [the tenant's] suite and the suite above her, # 209, would be renovated in the spring and both at the same time to lessen the disturbance to any tenants living below a construction site. [The tenant] and the tenants in suite # 209 were formally given written notice on May 28, 2010.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, and provides in part as follows:

49(6) 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:

- (c) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Residential Tenancy Policy Guideline # 2 speaks to "Ending a Tenancy Agreement: Good Faith Requirement," and provides in part:

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.

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.

Section 55 of the Act speaks to **Order of possession for the landlord**, and provides in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property. I further find that the landlords have met the burden of proving, on a balance of probabilities, that their good faith intent is to proceed with renovations to the subject unit and the unit above as described, and that they have no dishonest or ulterior motives. Accordingly, pursuant to the landlords’ oral request, I find that the landlords are entitled to an order of possession. The tenant’s application is hereby dismissed.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlords effective not later than **1:00 p.m., Saturday, July 31, 2010**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: July 21, 2010

Dispute Resolution Officer