

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's legal counsel, contractor and building manager. The tenant did not attend. Notice of Hearing documents were sent directly from the Residential Tenancy Branch to both parties. I am satisfied that both parties were sufficiently served with notice of this hearing, in accordance with Section 71(2)(b) of the *Residential Tenancy Act (Act)*.

The matter was originally heard on February 26, 2010 and a decision was written the same date granting the tenant's application and cancelling the landlord's notice. The landlord pursued the matter through judicial review in the Supreme Court of British Columbia where the Court ordered the original decision to be set aside and the matter be remitted back to the Residential Tenancy Branch for reconsideration.

The order included specific instructions to reconsider the need for vacant possession taking into account:

1. The period of time required for which vacancy is required;
2. The grounds on which vacancy is required including any health, safety or utility concerns; and
3. The likelihood of co-operation and accommodation on the part of the tenant.

The Court's order also gave instruction to exclude consideration of any evidence on whether the petitioner has other units available, as the landlord understood the original decision to include an order to provide the tenant with alternate accommodation.

While the original decision did not provide such an order or consideration of that issue, I confirm that that no consideration has been given to the availability of other vacant rental units on the residential property for the purposes of this decision.

This hearing will rely on the evidence and testimony from the original hearing and additional testimony provided at this hearing. Neither party submitted any additional documentary evidence.

The landlord's counsel requested clarification during the hearing of what would be used as the effective vacancy date should the matter be determined in the landlord's favour. I advised counsel that usually an order of possession is issued requiring the tenant to vacate the rental unit 2 days after the order has been served on the tenant.

I also suggested that an order of possession could be granted with a specific date if the landlord so wished. Landlord's counsel testified that he had not been given the authority to determine any specific date. I advised counsel that should one be issued for vacancy after 2 days service the landlord would remain at liberty to provide the tenant with additional time to vacate if he so wished.

Through this discussion, I accept the landlord was seeking an order of possession should the tenant's application be dismissed.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 47 of the Act.

Background and Evidence

In relation to the likelihood of cooperation on the part of the tenant, the building manager testified the tenant presents resistance and non-cooperation for even a simple inspection and that she is verbally abusive.

Specifically since the last hearing on this matter the building manager testified that the tenant contacted the landlord as there was a leak in a sink in the rental unit and the tenant has done nothing but hinder the landlord's ability to repair this one deficiency.

The landlord's agents referred also to the transcript of a phone message that had been left with the building manager prior to the last hearing showing the tenant's penchant for expletives and profanity in dealing with the building manager.

The landlord's contractor provided additional testimony regarding the period of time for which vacancy is required. The contractor indicated the renovation would require at least 2 months from start to finish, as the best case scenario. A true estimate of the completion time could not be obtained until they started the renovations and determined if there were any additional issues or problems that needed to be dealt with.

The contractor further testified that demolition would begin on day one with the removal of kitchen and bathroom cabinetry, removal of appliances, and shutting off of water and electricity. Should all go well, the contractor estimates that within 2 weeks the cabinets would be reinstalled at which point countertops could be measured.

Once measured the countertops would need to be fabricated and installed. After the installation the plumbing could be hooked back up.

As to the grounds on which vacancy is required including any health, safety or utility concerns the contractor indicated that because there is no other place to work, that is appropriate, on the residential property the work must be completed in the rental unit. These include the need to assemble and install the cabinetry.

As a result when there is cutting of materials and dry walling there will be small particulates in the air that require him and his staff to wear respiratory masks. In addition, since all of the contractor's equipment would be left in the rental unit there are safety hazards in regards to potential injury.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

There was no evidence presented at either hearing questioning the good faith intention, on the part of the landlord, to complete the renovations, at question is whether or not the renovations *require the rental unit to be vacant to the extent that requires the ending of a tenancy*.

I continue to accept the complete renovations will take from one to two months; however, I am still not convinced that the rental unit requires vacant possession of sufficient duration to end the tenancy when combined with the full cooperation of the tenant. Even in the testimony provided in this hearing the landlord's contractor continues to indicate that need for vacancy relies heavily on the need to use the space to work.

The contractor's testimony also indicated that the health concerns that result come primarily at times when the work is being completed (at such time the contractor wears respiratory masks) and that there is no health danger when not, for example, cutting composite baseboards. No one attending the hearing could provide any testimony on the matter of black mould as noted in one of the landlord's written submissions.

I still acknowledge that the removal of the kitchen cabinetry and deconstruction of the bathroom will by definition prevent an occupant from using cooking or cleaning facilities in the kitchen for a period of time. The landlord's contractor has provided more clarity on what will transpire during that period and that it will be in such a state for 3 to 4 weeks.

As noted in my previous decision the question of the need for vacant possession requires consideration for the duration of time for the need and the willingness of the tenant to cooperate completely and fully with the landlord and the landlord's schedule.

Based on the tenant's non attendance at this hearing and the undisputed testimony provided in this hearing, particularly, the building manager's testimony regarding the

tenant's complaint about a leak and then the tenant's reluctance to be available to allow for the landlord to make that minor repair, I accept the landlord has demonstrated the tenant is not able to be sufficiently cooperative to maintain the tenancy during the renovation.

As a result, I find the landlord is not able to complete the renovations planned without requiring this tenant and all occupants to vacate the rental unit.

Conclusion

Based on the findings above, I dismiss the tenant's application and I find that, in accordance with Section 55(1) of the *Act*, the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court 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: October 08, 2010.

Dispute Resolution Officer