

## **DECISION**

**Dispute Codes:** CNL and FF

### **Introduction**

This application was brought by the tenants seeking to have set aside a two-month Notice to End Tenancy for landlord use dated October 25, 2010 and setting an end of tenancy date of December 31, 2010.

Notice was served under section 49(6)(b) which requires that the landlord has all approvals and permits required by law to renovate or repair the rental unit in a manner that requires it to be vacant.

The tenant also seeks to recover of the filing fee for this proceeding from the landlord.

### **Issue(s) to be Decided**

This matter requires a decision on whether the Notice to End Tenancy was served in good faith to enable the landlord undertake construction of a garage, and renovations and repairs to the interior of the rental building.

### **Background and Evidence**

This tenancy began on July 15, 2006. Rent is \$1,818 per month and the landlord holds a security deposit of \$850.

During the hearing, the landlord and his counsel submitted into evidence two separate building permits, one for construction of the garage and the other for the interior work, one issued in August and the other in November of 2010.

The landlord also submitted a copy of a building permit issued in February of 2006 to construct a garage, a project he said was placed on hold due to the need for the parking space in the rental unit.

The landlord stated that one of the reasons to commence the work at present was increased vandalism in the area, a circumstance to which the tenant agreed stating his own car had been vandalized on more than one occasion. In addition to the provision of secure parking, the landlord also wanted to install a window in the upstairs den to provide a view, currently unavailable, to a part of the property more vulnerable to vandalism.

At the same time, the landlord plans to install french doors in a room on the ground floor and the installation of marble floors in three areas. The landlord stated that the windows and door would require the installation of headers which meant removing drywall from the walls and ceilings.

He stated that, a builder by profession, he would be doing the work himself as he has done on previous projects on the property. He said he anticipated the projects would take several months and he would be in and out of the rental building at irregular times

to do the work and required use of the garage now used by the tenant for tool storage and as a workshop. The landlord's counsel noted that the landlord is in his seventies.

The tenant expressed concern that the Notice to End Tenancy might have been retaliatory as the parties had been involved in a dispute resolution hearing in which the tenant succeeded. The landlord stated that was not a factor in his decision to proceed with the work that he has been planning for some time. He acknowledged that the tenant took exceptionally good care of the interior of the rental unit, and that in his wish to do the work, he had considered that he would experience a substantial loss of revenue while the rental unit was empty.

The tenants have expressed their intention to move in June 2010 and wished the project could have been put off until then.

## **Analysis**

The *Act* provides mechanisms for both a landlord and a tenant to end a tenancy, absent serious cause or unpaid rent. Where the tenant is normally required to give only one month's notice, the *Act* requires the landlord to give double the one month's notice when it is given for landlord use.

In addition, the landlord must give one free month's rent, and take possession on penalty of an additional two months rent if the landlord does not use the unit for the stated and approved purpose. Clearly, the legislation works to ensure that Notice for landlord use is not taken lightly.

In evaluating a Notice to End for landlord use, policy guideline 2-2 advises that such notice must be given in faith and that:

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.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

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

In considering the present matter, I find no reason to question the food faith of the Notice to End Tenancy.

The landlord has expended \$945 for building permits, his vocational experience qualifies him to do the work, and the parties appear to agree changes to protect the property against vandalism are not unreasonable.

Therefore, I accept that the Notice to End Tenancy was issued in good faith and I can find no cause to set aside the Notice.

## **Conclusion**

The tenants' application is dismissed and the Notice to End Tenancy is upheld.

November 30, 2010