

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on January 31, 2011. The tenant testified that he handed the landlord's building manager a copy of his dispute resolution hearing package on February 9, 2011. As both parties confirmed having received these documents from one another, I am satisfied that the parties served these documents in accordance with the *Act*.

At the hearing, the landlord's agent made an oral request for an Order of Possession in the event that the tenant's application to cancel the Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled? Should an Order be issued to the landlord requiring her to comply with the *Act*?

Background and Evidence

Other than the tenant's application for dispute resolution, the only written evidence submitted by either party was the tenant's copy of the Notice.

This month-to-month tenancy for a small rental unit within a hotel commenced on June 11, 1994. Monthly rent is set at \$386.50. The landlord continues to hold the tenant's \$167.50 security deposit paid on June 11, 1994.

The landlord's agent (the landlord) said that this rental unit has not been renovated for 16 years. He said that when the Fire Department inspected the hotel last year, they told him that the landlord would have to install a closet as there is nowhere for the tenant to hang his clothes. He said that the landlord needs to upgrade the rental unit by changing the countertop and performing plumbing work to convert the existing sink to a kitchen sink. The landlord also plans to install kitchen cupboards and a new floor, and paint the

rental unit. The landlord said that the renovations cannot be conducted while the tenant lives there as the work will require at least two weeks to complete. The landlord presented no bills, invoices, estimates, schedules, plans, photographs, sketches, drawings or diagrams to confirm the work that is planned for this rental unit. When questioned, he said that he did not believe that any permits or approvals would be required in order for the owner to undertake the planned renovations. He said that there are presently no vacant rooms where the tenant could be temporarily located while the renovations proceed. He said that the owner has upgraded 12 units in this rental property and is proceeding with plans to continue with these renovations.

The tenant agreed that the rental unit has not been renovated or upgraded since he moved into the unit. He said that the flooring is in very good shape and that the rental unit does not require renovation. The landlord said that the tenant had not produced any photographs to demonstrate that the rental unit is in satisfactory condition and does not require renovation and upgrading. The tenant questions the need to upgrade anything but the tap under the sink and a washer in the tap. He maintained that there is presently one vacant rental unit in the property and that others have been available over the past year. The tenant claimed that the renovations are an excuse to evict him and raise rents for the next tenant who moves into this rental unit.

Analysis

Application to Cancel Landlord's Notice

Section 49(6) of the *Act* reads in part as follows:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant...

Section 49(6) of the *Act* and Residential Tenancy Policy Guideline 2 establish that a landlord pass the following three-part test when a landlord attempts to end a tenancy to renovate or repair a rental unit.

1. The landlord must have all the necessary permits and approvals required by law;
2. The landlord must in good faith intend to renovate or repair the rental unit; and
3. The landlord must demonstrate that the proposed renovations or repairs need to be performed in a manner that requires the rental unit to be vacant.

Based on the absence of any written evidence from the landlord and the testimony of the parties, I am not satisfied that the landlord has met two of the three tests required to give effect to the landlord's Notice.

The landlord testified that he did not believe that the owner needed permits or approvals to conduct the types of repairs and renovations that were planned for this rental unit. The tenant's advocate questioned this assertion and maintained that the landlord had not demonstrated that this most basic of the requirements of the landlord's Notice had been fulfilled. The landlord's agent may be correct in asserting that it is not necessary to obtain permits or approvals for some of the items the landlord is planning to replace. However, other than his oral testimony, he provided nothing to confirm that this is correct. The landlord's agent's vague oral descriptions of the structural and plumbing changes scheduled did not convince me to the extent necessary that permits and approvals are not required to conduct this entire renovation. The landlord's agent offered few details regarding the landlord's plans and schedule for completing this work, noting that the plans depended on the outcome of the hearing.

Turning to the second of the tests, the lack of any plans, schedules, estimates or any written documentation does raise questions regarding whether the landlord truly intends to perform this work in the rental unit. As noted above, the tenant questioned the landlord's intentions and motivations. However, given the undisputed testimony regarding the lack of upgrading or updating to the tenant's rental unit for the past 16 years, I am satisfied that the landlord is acting in good faith in seeking an end to this tenancy to perform renovations.

I also find that the landlord has not met the burden of proof required to demonstrate that the proposed renovations require the tenant to vacate the rental unit. The lack of detailed plans regarding the proposed work makes it difficult to assess whether the tenant truly would need to vacate the rental unit for a two-week period. The tenant testified that he has expressed willingness to store some of his belongings elsewhere if necessary. He also said that he remains open to moving into other vacant rental units within this building that have been available in the past and which he maintains are either presently vacant or expected to be vacant shortly. It does not appear to me that the landlord has given sufficient consideration to these options.

I find that the landlord has not met the burden of proof required to give effect to the Notice to End Tenancy he issued to the tenant on January 31, 2011. I allow the tenant's application to cancel the landlord's Notice with the effect that this tenancy continues. Since the tenant's application was not dismissed, I deny the landlord's oral request for an Order of Possession.

Application for an Order Requiring Landlord's Compliance with the Act

The tenant's application did not specify what order he was seeking from the landlord. During the hearing, the tenant and his advocate did not speak to this issue. On this basis, I dismiss the tenant's application for an Order requiring the landlord's compliance with the *Act*, regulation or tenancy agreement.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property. This tenancy continues.

I dismiss the tenant's application for an Order requiring the landlord's compliance with the *Act*.

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*.