

DECISION

Dispute Codes CNL

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for Landlord's use of the property.

Both parties attended the hearing by conference call and gave testimony. Both parties had an agent and an advocate to assist them in submissions.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for Landlord's use of the property?

Background and Evidence

The Landlord has acknowledged receipt of the notice of hearing package from the Tenant. The Tenant has only filed a copy of the notice. The Tenant has acknowledged receipt of the Landlord's evidence and has made detailed reference to them during the hearing.

The Landlord served the Tenant with a 2 month notice to end tenancy for Landlord's use of the property on September 26, 2011 with an effective date of November 30, 2011. The Landlord's listed reason on the notice is "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." The Tenant has acknowledged receiving the notice and has subsequently filed for dispute. The Landlord states that the work required is as a result of a fire in the rental unit living room and has supplied an email from the Vancouver Fire Investigations Division. The Landlord claims in a letter provided by his insurance adjuster that a basement fire occurred with the cause unknown. The insurance adjuster's letter dated August 18, 2011 states, "It is physically impossible for anybody to live in the unit as all flooring, walls, etc will need to be removed and replaced. Typically for this type of claim, habitants of the unit would need to live elsewhere from the onset. If somebody is living in the unit, repairs will be substantially delayed and for safety reasons would not be allowed." The Tenant

disputes this stating that he has some construction experience and that this work does not require the unit to be vacant and can be completed within a week. The Landlord has submitted an email from CanStar restorations stating that work (from the date of the email, August 23, 2011) would take about 3-5 weeks to coordinate. The Landlord has submitted a letter from CanStar restorations listing the “scope of work” required. The Tenant argues that the most significant work required has already been demolished in the living room which is shown in the Landlord’s photographic evidence. The Tenant states that the work described shows that the most significant work in the Tenant’s bedroom requires that the carpet and pad be removed and replaced. The Landlord has provided a letter from the insurance adjuster dated September 26, 2011 that claims, “We have been unable to gain access to the unit as the tenant has not vacated the unit. This not only puts the tenant in risk but also the other tenants in the two upper suites because of lingering smells and chemicals from the fire. We feel that a reasonable amount of time has passed for the unit to be vacated. Repairs to the unit will not be able to commence until the unit is unoccupied. With flooring, ceiling and drywall repairs, it is required that the unit be vacated during the repairs.” The Tenant disputes this stating that the letter is in conflict with CanStar restorations “scope of work”. The Landlord states that he is unaware of any permits that should be required and that it is the responsibility of the contractor to obtain them. The Tenant disputes this stating that there is no evidence submitted by the Landlord that permits and approvals are not required.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the Tenant has met the burden of proving that they have grounds to have the Landlord’s notice to end tenancy for Landlord’s use of the property set aside. While the Landlord has provided evidence from the insurance adjuster requiring the unit to be vacant, I find that this is in contrast to the letter provided by the restoration company. The Landlord has not provided any definitive evidence that any permits are necessary or not required for the repair of the rental unit. I further note that the Landlord has failed to provide any evidence of health or safety concerns that would prevent the Tenant from living in the rental unit.

Conclusion

I therefore allow the Tenant's application and set aside the Landlord's notice to end tenancy for Landlord's use dated September 26, 2011 with the result that the tenancy continues uninterrupted.

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: November 10, 2011.

Residential Tenancy Branch