



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property; and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Is the tenant entitled to a monetary order, and if so for what amount?

Background and Evidence

The rental unit consists of an older heritage home. The tenancy started on March 15, 2007. The rent is \$1056.73 per month.

On April 11, 2012, the landlord served the tenant with a 2 Month Notice to End Tenancy for landlord's Use of Property. The notice states for reasons that the landlord has all necessary permits and approvals required by law to demolish or repair the rental unit in

a manner that requires the rental unit to be vacant. Attached to the notice is a City of North Vancouver Building Permit valid until April 10, 2014.

The landlord's counsel testified that the landlord relies on the above noted permit and that extensive renovations will be completed, which include electrical, plumbing, the garage, etc. Counsel referred to the contractor's work estimate provided as evidence, wherein the contractor states that additional electrical and plumbing permits will be obtained, and that the premises will not be safe during these renovations. Counsel also made reference to a March 27, 2012 letter from the City of North Vancouver that outlined the extent of the work required; however that letter was not provided as evidence. Counsel stated that additional permits cannot be obtained until the work commences under the current permit.

Counsel referred to an earlier Residential Tenancy Branch decision wherein the landlord's notice was set aside because evicting the tenant to allow nuns to move in was found to be inadequate grounds for ending the tenancy. Counsel stated that the landlord nevertheless always had intentions to renovate the property.

The tenant testified that the landlord never did any work on the property until the plan to have the nuns from India as new tenants came to light. The tenant did not argue that the property needs extensive repairs; she stated that she already did extensive work and that the extent of the contractor's work assessment is excessive. She stated that nevertheless, she is willing to work around the repairs, to cooperate and accommodate the contractors; she said that the house is big, with 5 bedrooms, and she can empty out several of the rooms. She said that if need be, she can vacate temporarily if the house becomes inhabitable.

The tenant said that the contractor's work sheet does not specify the City of North Vancouver's directions, and that no electrical or plumbing permits are in place. She stated that the motive to end the tenancy is to accommodate the nuns from India.

The tenant also submitted a monetary claim of \$298.88 for loss of wages, and \$56.84 for mailing fees; however she did not address this aspect of her application at the hearing.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy for the reasons stated, and that he intends to do so in good faith.

Section 49(6) of the Act states in part that the landlord may end the 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.

The landlord has provided a contractor's estimate of the work intended to be performed; in that estimate, the contractor states that additional permits for plumbing and electrical will be obtained; however the landlord has provided a single building permit, but no other permits as claimed by the contractor. In that regard I find the landlord's evidence contradictory; at the hearing the landlord's agent stated that these permits could not be obtained until the work commences so that it can be established whether or not the other permits will be required; on the other hand the contractor states that these permits will be obtained by plumbing and electrical contractors.

The contractor's estimate also states that because walls and floors will be opened, and plumbing will be shut off, the premises will be unsafe during the renovations, but does not specify why or how. The Act does not permit a landlord to end a tenancy on the basis of speculation, but only when supported by substantive evidence that it will not be possible for the tenant to continue to reside in the unit. Further, if the tenant needs to, and is willing in this case, to temporarily vacate the unit for the duration of renovations, the tenancy does not necessarily need to end. I heard no evidence from the landlord concerning the tenant's willingness to cooperate, or to temporarily vacate the rental unit.

Nor am I persuaded on the evidence that the renovations will require the unit to be vacant

The fact that the landlord served this notice to end tenancy at the heels of two unsuccessful attempts in March and April 2012 calls the landlord's good faith into question.

For these reasons I find that the Notice to End Tenancy should be set aside and is of no force or effect. If permits are obtained and investigations show that the extent of the renovations requires the unit to be vacant, and if the tenant is no longer willing to cooperate or vacate the unit during the repairs, or if the property needs to be demolished, the landlord may serve another notice to end tenancy.

Concerning the tenant's monetary claim; as stated earlier the tenant brought no evidence concerning this aspect of her application. Nevertheless, other than the filing fee, there is no provision for a party to make a claim under the Act for litigation costs, mailing costs, or any other costs related to an application for dispute resolution, and I note in her application that the tenant did not apply to recover the filing fee.

Conclusion

The notice is set aside and the tenancy will continue.

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: May 02, 2012.

Residential Tenancy Branch