



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL OLC

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use and Orders that the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony.

Preliminary Matters

The landlord confirmed receipt of the tenant's application on either June 7th or 8th, 2012. The hearing package was sent to the landlord via registered mail on June 6, 2012.

The tenant received the landlord's 762 page evidence submission on June 14, 2012; when the advocate and landlord met to exchange documents. At this time the landlord received the tenant's 121 page evidence package.

On June 18, 2012, the tenant made 7 attempts to forward a 7 page, typed submission to the landlord's facsimile machine. The landlord stated the facsimile was not received. The tenant acknowledged that the transmission would not complete, so the submission was left for the landlord at his place of business. The landlord confirmed that the submission has been delivered to his place of business on April 18, 2012, but that he had not yet had time to review the document. The landlord argued that the tenant failed to submit their evidence within the time frame set out in section 3.5 Act.

I determined that the landlord had received the 8 page typed submission at least 2 days prior to the hearing and that, despite the landlord's failure to have reviewed the submission, that I would consider the document, given it was a summary of the testimony the tenant would present. Further, at the reconvened hearing held on June 26, 2012, the landlord confirmed that -----t

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on May 31, 2012, be cancelled?

Must the landlord be ordered to comply with the Act?

Background and Evidence

The tenant supplied a previous decision (file 778944) as evidence. That decision set out the terms of the tenancy:

- Month-to-month term, that commenced on April 1, 2005;
- The current tenancy commenced in July 2009; when the tenant moved to her current unit;
- A condition inspection report was not completed when the tenant moved into the current unit;
- Rent is due on the first day of each month; and
- A deposit in the sum of \$300.00 was paid at the start of the original tenancy.

Rent paid is currently

The tenant's evidence sets out details of previous decisions issued:

- providing the tenant with compensation for aggravated damages;
- compensation as a result of the landlord's failure to complete repairs;
- compensation for loss of use;
- Orders the landlord complete repairs; and
- On-going rent abatement until repairs were to completed.

The tenant supplied a copy of a decision issued on March 16, 2012; in which a landlord was Ordered to pay an administrative penalty for failing to comply with an order of the Director, pursuant to section 94.1 of the Act. The landlord confirmed that this decision was linked to the tenancy in dispute.

The landlord was issued a penalty in the sum of \$500.00 per day; totaling \$115,000.00, for 220 days during which time the landord had failed to comply with repair Orders, previously issued.

On May 31, 2012, the tenant was issued a 2 Month Notice to End Tenancy for Landlord's use of the Property. The Notice has an effective date of July 31, 2012.

The reason indicated 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.”

Landlord's Submission:

The landlord's witness, C.G. is a general contractor with the construction company that has successfully bid on building envelope radiation for the tenant's 30 unit, 3 storey building. The construction company specializes in envelope restoration and that they are certified to meet compliance with all regulations and building standards.

C.G. confirmed that the copy of the City of Surrey Building permit contained in the landlord's evidence was the basis of the contract that has currently been awarded to his construction company.

The building permit was issued on May 28, 2012 and the work description permitted is:

“for targeted building envelope remediation (South Elevation of 3rd Floor Stucco & rain screen, windows & doors, balconies 2nd floor & North elevation 3rd floor breeze way exterior cladding & membrane tie in). This is an existing non-conforming building regarding the Surrey Zoning Bylaw requirements. (i.e. Zone “RF – Single Family”).

Unit 303, directly above the tenant's unit, has had preliminary “destructive testing” that is required to establish what, if any, decay may be present in the structure. A copy of a May 29, 2012, preliminary destructive testing report for unit 3030 was supplied as evidence. This report indicated that major structural decay was present along the south elevation patio sliding door, at the left side, floor level. Drywall replacement is deemed required and windows show signs of mould and water ingress at the sill.

The report determined that the decay issues extend to unit 201, below and that the unit 201 will require targeted demolition to properly assess the areas of structural failure. C.G. stated that assessment of decay can only be made by removal of portions of the wall. Due to the decay in unit #303, shoring is required from unit #201

Tenant's Submission:

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that

Conclusion

As I have determined that I find that the 2 Month Notice to End Tenancy for
Landlord's Use issued on is .

The tenant's Application for Dispute Resolution is dismissed without leave and,
based upon the oral request of the landlord I have issued an Order of possession to the
landlord, pursuant to section of the Act.

As I have determined that the 10 Day Notice to End Tenancy for Unpaid Rent issued on
is of no force or effect I find that this 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: June 26, 2012.

Residential Tenancy Branch

