

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a Notice to End Tenancy –Section 49; and
2. An Order that the landlord comply with the Act – Section 62.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started in September 1979. On June 18, 2012, the Tenant was served with a Notice to End Tenancy for Landlord’s Use (the “Notice”). The effective date of the Notice is August 31, 2012. There is no dispute that the reason for the Notice is as follows:

The landlord has all the 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.

There is no dispute in relation to the permits and approvals. There is no dispute that the unit will not be demolished. The Tenant disputes that the rental unit must be vacant for the repairs to the unit. The Tenant also disputes the Landlord’s good faith intention in relation to the reason for the Notice.

The Landlord states that renovations to the unit are necessary and will take approximately three to six months to completion. The Landlord states that work will be continuous on a daily basis and although contractors will be involved, the Landlord will be personally working on the unit as well.

The Landlord states that the renovations to the unit are extensive, involving mechanical and structural changes such that they require the unit to be vacant. The Landlord states that electricity and gas will be disconnected to parts of the unit during the construction. The Landlord states that the structural work will occur in the one side of the basement, and will require the fixing of a slope and the installation of new beams. This work will require the demolition of the basement floor and the pouring of concrete. Plumbing, gas fitting and electrical rewiring will require the clearance of household articles in the upper part of the unit. The Landlord states concern over the risk of damage to the Tenant's furnishings and art work. Scaffolding will be in place, walls will be opened and the construction tools will be onsite during the renovations, including after working hours creating construction and fire escape hazards. The Landlord states that there will also be significant dust creating a health hazard to any occupants. The Landlord states that the decisions on how to make the structural and utility changes (plumbing, electrical rewiring) were made on the basis of economics, efficiency and utility. The Landlord states that the Tenant's likelihood for cooperation and accommodation for the renovations is unknown but that the Tenant was cooperative during previous work done in the unit.

The Tenant states that over the years of the tenancy the Tenant has put significant money into the unit for various repairs and changes. The Tenant states that work has been done by the Tenant to take care of the other units as well. The Tenant states that renovations to these other units has created dust and chaos and the Tenant is currently living through this and is prepared to live in the unit during its renovations as well. The Tenant state that family members live close by allowing her to stay out of the unit for periods of time during renovations. The Tenant states that she is prepared to move furniture and to store it if necessary. The Tenant states that she is aware that the

Landlord could, as a result of the renovations, make an application to raise her current rent of \$800.00 to a much higher level. The Tenant states that she is aware that one of the renovated units has been advertised for a rental rate of \$3,000.00 per month.

The Tenant states that most of the work will be done in the basement that is currently not used for anything other than storage. The Tenant states that the work on the upper floor will be mostly cosmetic and that furniture that may in the way for the removal of the walls can be removed for these periods. The Tenant states that the plumbing and rewiring on the upper floor could be done from the wall of the unit beside the Tenant's unit without working on the Tenant's side. Further, the Tenant states that this unit is empty allowing work on her unit to be done without disturbance to any occupants. The Tenant states that scaffolding and the removal of fire escapes has occurred for other units even while new tenants are in place.

The Tenant states that the Notice was given in bad faith because as soon as the Tenant advised the Landlord of her willingness to cooperate, she was served with the Notice without any dialogue at all with the Landlord in relation to the Tenant's willingness to accommodate the renovations. The Tenant states that she informed the Landlord that the unit would be vacant for six weeks over the summer while the Tenant is on holidays and that the Landlord could have used that opportunity to do a large portion of the work to the unit. The Tenant states that some of the repairs noted in the permits to be carried out on the other units were never done and that this also shows the bad faith of the Landlord's position about the work to be done on the Tenant's unit.

The Witness for the Tenant, whose letter setting out the Witness' qualifications and experience in construction work has been submitted as evidence, states that in his opinion, the work as set out by the Landlord could be done within a month and without requiring the unit to be vacant. The Witness states that in his experience, whenever these types of renovations are carried out with owners as occupants, the owners do not vacate their homes and that the requirement for a vacant unit only occurs where tenants are in place. Further, the Witness states that the permits issued by the City do not

require the unit to be vacant. The Witness states that the work proposed by the Landlord can be done while the Tenant is present and that while it is inconvenient to both Parties, it is a workable situation.

The Witness states that the unit next to the Tenant's unit shares a wall that has already been opened. The Witness states that this provides access to the units plumbing and that simple connections and ducting work can be made without taking down the Tenant's wall. Further, the Tenant's unit already provides access for plumbing to the bathroom from the basement. The Witness states that all the new plumbing has already been put in place in the basement next to the beams and questions why this would have been done if there is a need for support walls. The Witness states that even if the beams require replacement, the Witness has completed this type of work simply and safely without anyone needing to move out. The Witness states that none of the work in the basement causes safety concerns if done properly.

The Witness states that the beaming for the main floor should only be a one day job and that the remaining work is cosmetic. The Witness states that the permits indicate that the other units were also to have beaming replaced but that this was not done in the vacant units. The Witness states that this lends credence to the Tenant's argument that the Landlord is does not have a good faith intention in relation to the scope of the work. The Witness states that the Landlord only requires a tenant willing to move articles away from walls or even out of the unit.

The Witness states that the rewiring work for the electrical upgrades will not require any wall cuttings as the wires can be disconnected and capped without touching the walls. Further, the Witness states that the City does not require the replacement of wiring and if done through the walls only requires the removal patches or strips of the wall.

The Witness states that he became informed of the renovation work done on one of the units as this unit was advertised for rent and the Witness then viewed the unit.

The Landlord states that most of the Witness evidence is based on a unit where no renovations were required or done. The Landlord agrees that some work could be done through the adjoining wall without disturbing the Tenant's side but that that this work did not occur on the adjoining wall as they knew they would be working on the Tenant's unit at a later date and would be opening that wall for the work. The Landlord states that the existing wiring is problematic, needs rewiring and that as is it not cost effective to cut strips in the wall, the walls will be opened. The Landlord states that the timeline for the renovations is based on the budget and the available time of the Landlord. The Landlord challenges the Witness qualifications and states that the Landlord's letters setting out the need for vacancy are from construction experts who will be doing the work along with the Landlord.

Analysis

Section 49(6) provides that a landlord may end a tenancy of a unit if the landlord has all the necessary [permits and approvals required by law and intends in good faith to renovate the unit *in a manner that requires the unit to be vacant*. In making a determination of the need for vacant possession, the following must be taken into account: the period of time for which the vacancy is required; the grounds on which vacancy is required, including any health, safety or utility concerns; and the likelihood of cooperation and accommodation on the part of the Tenant. In order to demonstrate "good faith", the landlord must show an honest intention to use the premises for the purposes stated and must not have an ulterior motive as the primary motive for seeking to have the tenancy vacate the residential premises. Given the Landlord's evidence of the work to be completed and accepting that the work will be done with both contractors and using the Landlord's own time, I find that the Landlord has demonstrated on a balance of probabilities that the good faith intention has been met. Although the Tenant has indicated a great willingness to accommodate the Landlord's work on the unit, given the length of time for the renovations and considering the kind of renovations to the basement and upper floor, I find that as a practical matter the unit requires vacancy due to safety, health, utility and liability concerns involved in the extensive structural and mechanical work. I do not find that the evidence of the Tenant that the Landlord could

complete the work in a much shorter period of time to be a factor in this consideration as the Landlord has provided evidence that the planned time frame and approach to the renovations takes into account financial considerations and the Landlord's own time. Further, if the tenancy were to continue during the extensive renovations, it would open the door to a claim by the Tenant for compensation for loss of use of the unit over a lengthy period of time. This situation would severely prejudice the ability of the Landlord to improve the value and durability of his property and cannot have been contemplated by the Act in allowing for an end to tenancy where renovations are taking place. Accordingly, I find the Notice to end tenancy to be valid and I dismiss the Tenant's application.

Conclusion

The Notice to end tenancy is valid. The Tenant's application is dismissed.

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: July 24, 2012.

Residential Tenancy Branch