



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy for landlord's use of property and to recover the filing fee for this application. Both parties participated in the conference call hearing. The landlord orally requested an Order of Possession, if I uphold the landlord's Notice to end or dismiss the tenant's application.

Issues to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to the monetary amount claimed?

Background and Evidence

The parties agreed that the tenant occupies a 2 bedroom rental unit which is now the subject of a sale by a new buyer. The landlord testified that the sale hinges on a contractual obligation of sale that the unit will be upgraded to include new floorings in the rental unit as well as removal of the "non-bearing" wall between the kitchen and the living rooms. The landlord provided evidence of the sale of the unit, and the material associated with the marketing of the rental unit for sale, which articulates that the unit interiors have (or will have) new floorings in the majority of the unit, and will be painted.

On June 16, 2012 the landlord's agent served on the tenant a 2 month notice to end tenancy which stated that the unit would be renovated in a manner that required it to be vacant.

The parties were advised agreed that the tenant is entitled to the equivalent of one month's rent pursuant to section 51 of the Act which was triggered when the landlord served the 2 month notice to end tenancy.

The parties further agreed that the rental unit is subject to a registered covenant which secures the rental unit as such - that it cannot be owner-occupied and must remain as a rental unit. The tenant received correspondence by the landlord as early as January 31, 2012 advising them that a marketing entity had been secured to sell the rental unit. As a result the marketing documentation promised upgrades to the rental unit. None the less, in March 2012 the tenant received further correspondence stating that the tenant would likely not be required to vacate upon the sale of the unit. The tenant testified that the correspondence was of some comfort, but that had they known they would need to vacate they would have sought alternate accommodations early on in the plan to sell the unit. However, regardless of the landlord's estimate respecting the continuation of the tenancy, they received the landlord's notice to end 3 months later in response to the marketing promises for the unit, and the tenant is now not in a position to vacate due to practical and family reasons.

The landlord reiterated that the sale of the unit is binding and that the proposed renovations will be intrusive on the tenant and cannot be accomplished while the tenant occupies the rental unit.

Analysis

Despite the issues and concerns expressed by both parties, and in the absence of the parties resolving their dispute by agreement, I must decide on this matter based on the provisions established in the Residential Tenancy Act (the Act) respecting the landlord's Notice to End.

Sections 49(6)(b) of the Act, pursuant to which the notice to end tenancy was issued, provide as follows:

49(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:

49(6)(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

In respect to the proposed renovations, the landlord must show that that (a) they have all the necessary permits and approvals required by law; (b) they intend in good faith to renovate; and (c) the intended renovations require the rental unit to be vacant.

With respect to the proposed renovations, the landlord testified that no permits are required to undertake the floor renovations and painting intended for the rental unit, but

that the landlord has a permit requisition into the local government respecting the removal of the kitchen wall. The tenant appeared to accept that permits were not required for the flooring and painting and it is understood by the parties that any current permits granted are only for alterations and upgrades to common areas of the building. I find that the landlord has sufficiently demonstrated that they intend, in good faith to do all the proposed changes in the unit. The landlord has not proven that the proposed changes cannot be accomplished without the tenant vacating. I find that the changes proposed by the landlord are primarily cosmetic and structurally are minimal; and, while I accept that permits are not required for most of the upgrades and that permits may or may not be required for the kitchen wall removal, I am not satisfied that all of the proposed renovations cannot be accomplished while the tenant remains in the unit and the rental unit need not be vacant to accomplish the landlord's plans. As a result, the landlord's Notice to End for Landlord's Use of Property dated June 16, 2012 **is cancelled**, and is of no effect.

The tenant is entitled to recover their filing fee for their application.

Conclusion

The tenant's application is granted. **I Order** the landlord's Notice to End dated June 16, 2012 **is cancelled**, with the effect that the tenancy continues.

I Order that the tenant may deduct **\$50** from a future rent in satisfaction of the filing fee.

This Decision and Order is final and binding on both parties

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 10, 2012

Residential Tenancy Branch