



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was scheduled to hear a tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established that the tenancy must end and the tenant must vacate the rental unit in order to complete a bathroom renovation?

Background and Evidence

The tenancy commenced nine years ago on May 15, 2003. The tenant currently pays rent of \$1,195.00 on the 1st day of every month. On June 3, 2012 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with an effective date of August 31, 2012. The Notice was mailed to the tenant on June 4, 2012 via registered mail and the tenant received it a few days later. The tenant filed to dispute the Notice within the time limit permitted under the Act.

The reason for ending the tenancy, as indicated on the Notice, is that:

- 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.

It was undisputed that in early May 2012 a water leak was detected in the ceiling of the unit below the rental unit. In the days that followed various contractors and repairmen attended the rental unit to inspect the bathroom and there were discussions about the need to open up some of the walls in the tenant's bathroom and make other repairs in the tenant's bathroom.

The landlord submitted that the landlord has determined that the tenant's bathroom needs to undergo a full renovation. The estimated time line to accomplish the renovation is 2 – 3 weeks although the estimated time line is subject to change due to the nature of the work involved. During this time the tenant and his family will be without use of the only bathroom in the rental unit. It is also preferable that the tenant remove all of his possessions from the rental unit during this time so as to avoid liability for any damage that may occur to his possessions.

The tenant submitted that he has been co-operative insofar as permitting plumbers and contractors into the unit. Although, the tenant acknowledged that he has taken it upon himself to ask contractors for identification and proof of their credentials or qualifications. The tenant had also informed the landlord that he would only permit licensed plumbers into the unit to perform repairs. The tenant stated that he is willing to accommodate the renovation by going on vacation upon receiving two weeks advance notice from the landlord but he does not wish to vacate all of his possessions or end the tenancy.

The tenant provided a copy of the 2 Month Notice; the tenancy agreement; and, registered mail receipt as documentary evidence for this proceeding. The landlord did not provide any documentary evidence for this proceeding.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The landlord did not provide any evidence that permits or approvals have been obtained in order to perform the bathroom renovation. I recognize that permits or approvals are not always required by law; however, given this renovation involves plumbing I find it likely that permits would be required. Nevertheless, I do not have sufficient evidence before me to cancel the Notice on this ground alone and I proceed to consider whether the rental unit needs to be vacant during the renovation.

The landlord has the right to both maintain and improve his property as he determines necessary and appropriate. The Act provides for the minimum standard that a landlord must meet with respect to repairs and maintenance; however, if a landlord wishes to improve the property beyond that statutory obligation that is the landlord's prerogative not to be interfered with by the tenant.

Based on the submissions of the parties I am satisfied that the landlord is seeking possession of the rental unit in order to facilitate repairs and renovations of the bathroom and that the landlord issued this Notice out of frustration. As the tenant was informed during the hearing, the tenant must refrain from interfering with the landlord's attempts to repair the rental unit by contractors of the landlord's choosing.

I also offered suggestions to the parties that include the issuance of written 24 hour Notices of Entry and mutually co-operative communication. Further, the landlord clarified for the tenant that the resident caretaker is an authorized agent for the landlord for purposes of issuing Notices of Entry and providing contractors access to rental units.

I accept that it is reasonable to expect the walls and/or floor in the tenant's bathroom need to be opened up having heard there were sightings of a water leak in the unit below. It is clear and undisputed that the tenant's ability to use the bathroom would be significantly affected when the bathroom plumbing is disconnected. However, the tenant has indicated a willingness and capacity to accommodate the landlord's renovation efforts by going on vacation during the process.

The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia* (Residential Tenancy Act, Arbitrator), 2007 BCSC 257:

"[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use "vacant" to mean "empty". Thus, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in *Allman*. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

While I appreciate that it may more efficient for the landlord to complete the renovations while the rental unit is vacant, the test the landlord must satisfy is that there is no possible way to carry out the renovations unless the unit is vacant and that to achieve vacancy the tenancy must end.

Practically speaking, if the tenant is willing to leave the unit and not use the bathroom while the renovation is underway then an end to the tenancy is not required. Nor do I find it necessary for the entire unit to be vacated. The issue of liability for any damage to the tenant's possessions is an issue that the parties can resolve without requiring the tenant's possessions to be removed from the unit.

In light of the above, I find the landlord has not established that the rental unit must be vacant and the tenancy must end in order to renovate the bathroom given the tenant's willingness to accommodate a temporary loss of use of the bathroom. Therefore, I grant the tenant's application and cancel the Notice to End Tenancy.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

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 11, 2012.

Residential Tenancy Branch