



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC RP

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use, as well as for monetary compensation, an order for repairs, and an order that the landlord comply with the Act. The tenant and two agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on August 1, 2007. The rental unit is a ground-floor apartment in a building complex. In August 2011, the landlord notified all tenants in the complex that maintenance work on the exterior of the building would begin in the summer/fall of 2011. The final phase of work would involve ground-level wall repairs beginning in the winter of 2011/2012.

On November 1, 2012, the landlord served the tenant a notice to end tenancy for landlord's use. The notice indicates that the reason for ending the tenancy is that the landlord has all necessary permits and approvals required by law to repair the rental unit in a manner that requires the rental unit to be vacant.

Landlord's Evidence

The landlord has been carrying out repairs to the subfloor sleepers in the building, as water has been seeping in from the exterior of the building and causing deterioration of the sleepers. This results in very uneven floors on the ground floor apartments.

On October 17, 2012, engineers and the contractor examined the tenant's rental unit and determined that the amount of work required in that unit would be extensive, as the floors in all the rooms would have to be lifted out. The landlord submitted the engineer's report, which indicates that the work cannot be carried out with the tenants residing in the unit. The landlord estimated that the work to be done would take 8 to 12 weeks. The work is not structural, so no permits are required.

The landlord was able to temporarily relocate other tenants while work was being done on their units, as the work was much less extensive. However, the landlord is unable to temporarily relocate this tenant. The landlord would not approve a permanent transfer to another unit, as the landlord has a policy that they do not allow permanent transfers when a tenancy is not in good standing, and this tenancy is considered not in good standing because of late payments of rent and other reasons. The landlord submitted documentary evidence showing that the tenant was late paying rent in March, April and September 2012.

Tenant's Response

The tenant questioned the findings in the engineering report, as the inspection of her unit was, at the most, ten minutes long and not thorough.

The tenant also questioned whether the landlord issued the notice in good faith, because the landlord has temporarily re-housed other tenants while their suites were renovated. The tenant requested a temporary or permanent transfer, but the landlord refused the tenant's requests. The only reason the tenancy is considered not in good standing is because the tenant temporarily suffered financial difficulties and was late paying the rent a few times.

The tenant stated that as a last resort to preserve the tenancy, she would be willing to vacate the unit at her own expense while the work is being done.

Analysis

I find that the notice to end tenancy is not valid.

I accept the landlord's evidence that the work to be done on the unit is extensive and the will require the unit to be vacant for 8 to 12 weeks. However, the tenant stated that she would be willing to vacate the unit for that duration in order to preserve her tenancy. The landlord therefore has not provided sufficient evidence that it is necessary for them to obtain possession of the unit and end the tenancy.

Furthermore, I find there is some question of the landlord's good faith in issuing this notice to the tenant rather than allowing the tenant to transfer to another unit. The landlord's documentary evidence shows that the tenant was late paying rent three times in 2012, but the landlord did not submit any further evidence to support their testimony that the tenancy was considered not in good standing for any "other reasons."

Conclusion

The portions of the tenant's application regarding monetary compensation and orders for repairs and that the landlord comply with the Act are dismissed with leave to reapply.

The notice to end tenancy is cancelled, with the effect that the tenancy continues. For clarity, I note that the tenant will not be required to pay rent during the time that she has vacated for repairs, and her rent will resume at its current rate upon the tenant's return to the unit. If the repairs take longer than 12 weeks, the tenant may be entitled to monetary compensation.

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: December 19, 2012.

Residential Tenancy Branch