



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cherikoff Investment Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPL and FF
Tenant: CNL

Introduction

This hearing was convened on applications by both parties.

By application of February 13, 2013, the landlord seeks in Order of Possession pursuant to a two-month Notice to End Tenancy for landlord use served in person on January 31, 2013 and setting an end of tenancy date of March 31, 2013. The landlord also sought to recover the filing fee for this proceeding from the tenant.

By prior application of February 7, 2013, the tenant sought to have the Notice to End Tenancy set aside.

As a preliminary matter, the tenant stated that the landlord had failed to check off the appropriate box on page 2 of the Notice to End Tenancy which indicates which of the eight possible reasons for the landlord to end the tenancy for landlord use applies.

However, this tenancy was the subject of a hearing on October 29, 2012 on a notice for landlord use on the claim the landlord had all necessary permits and needed vacant possession to make repairs to the rental unit. As the needed repairs have been an ongoing issue between the parties and as the tenant made application on February 7, 2013 specifically contesting the need for extensive repairs, and as the tenant has been in discussion with two other tenants in a similar position, I find that the tenant was fully aware of the reason for the notice. Therefore, I do not find the omitted check mark to be a fatal flaw in the notice.

Issue(s) to be Decided

Was the Notice to End Tenancy given in good faith, without ulterior motive, to permit the landlord to conduct major repairs to the rental unit and building to a degree and for a time requiring vacant possession?

Background and Evidence

This tenancy began on December 1, 1995. Rent is \$975 per month and the landlord holds a security deposit of \$450 paid at the beginning of the tenancy.

During the hearing, the landlord stated that the proposed renovations extended beyond the rental unit into two others and into the plumbing infrastructure of the building.

He submitted photographs showing severe efflorescence, a white powdery substance, in the concrete ceiling below the subject and adjoining rental units, a sign of excessive moisture.

Another photograph showed water damage to a ceiling above the back door, and another showed corroded drain pipes in the ceiling of the maintenance room below the rental unit.

The landlord stated that, among other reasons, the need for more extensive work had been identified by plumbers called to repair the subject tenant's bath tub taps who had advised him of pin holes leaks in the pressured water pipes and the need to make proper repairs in the building which had been built in the 1950's.

The landlord submitted copies of current building and plumbing permits. He also provided two itemized estimates which placed the cost of some of the work at \$22,323.84 for the subject unit and another estimating \$105,000 plus tax for work on all three units and connected plumbing runs. The landlord said the total expenses for the work were anticipated to be about \$60,000 per unit.

The landlord stated that remedial work had made the renovation necessary but standard maintenance practices dictated that pending upgrade work should be done at the same time.

The tenant noted the finding of the previous hearing which set a similar notice to end tenancy aside as the arbitrator had found the notice has been based on the ulterior motive of upgrading the units to increase the rent.

The landlord expressed the view that it would be in the landlord's economic interest to forego the work, but it was absolutely essential to protect the structural integrity of the building.

The landlord stated that, even with a substantial rent increase, it would take years to recover the renovation expenses and that monetary gain was simply illogical as a motive for doing the work.

The landlord noted that the tenant's rent had increased only by eight percent since 1995, an indication that the landlord did not unnecessarily increase rents.

The tenant cited a judicial ruling that found such renovations should take no longer than two weeks. The estimates submitted by the landlord indicated the contractors would need up to ten weeks' vacant possession to perform the work as water could be shut off for that period. The landlord said the contractors would not guarantee even the ten week estimate because additional structural damage could be discovered when the walls were opened.

Analysis

Section 49(6) of the *Residential Tenancy Act* provides that a landlord may serve a two-month Notice to End Tenancy if the landlord has all of the permits and approvals required by law and intends in good faith to renovate the rental unit.

The interests of tenants are considered in such circumstances by the requirement under section 51(1) of the *Act* that tenants receiving notice under section 49 be given payment of the equivalent of one month's free rent.

Section 51(2) of *Act* provides further protection for tenants in allowing for an action if the landlord does not use the rental unit for the stated purpose starting within a reasonable time from the end of the tenancy or does not use it for that purpose for six months. If such were proven, the landlord may be made to pay the tenants an additional equivalent of two months' rent.

The key consideration in whether a Notice to End Tenancy for landlord use should be upheld or set aside is whether the notice was given in good faith and there was no ulterior motive.

I accept the evidence of the tenant that the notice to end tenancy in the previous hearing had been set aside as the decision maker had not been satisfied that there was no ulterior motive, specifically that the work was being done to facilitate ending the present tenancy to begin a new one at higher rent. However, the present hearing had the benefit of building permits and written estimates which did not exist at the time of the first hearing.

In addition, given the very substantial cost of doing the work, I find the status quo would have been the path of least resistance for the landlord if the needed work had not been driven by the structural threats to the building resulting from water intrusion.

While higher rent may be a consequence of the landlord's renovation program, I find it is not an ulterior motive. Therefore, the Notice to End Tenancy is upheld and I find the landlord is entitled to the Order of Possession as requested. As the landlord's premature issuance of the first notice to end tenancy contributed to this dispute, I decline to award the landlord's filing fee.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession to take effect at 1 p.m. on March 31, 2013.

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: March 04, 2013

Residential Tenancy Branch

