



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on June 25, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 8, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated June 25, 2013?

Background and Evidence

The tenancy began on June 7, 1989. The present rent is \$768.47 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$174.50 at the start of the tenancy.

The landlord seeks to end the tenancy on the basis that vacant possession is necessary to make a major renovation to the rental unit.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

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:

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

The landlord summarized the work in the following document:

“..... Townhomes Scope of Work

Extensive renovations are required on this unit that will also require the current residents to vacate the premises. All flooring will need to be replaced, including linoleum & carpets as several pieces are missing throughout the townhome and the wood beneath the linoleum is exposed. A full paint job will need to be done including the patching of several holes within the unit. Door frames will be replaced due to extensive damage and the back door to the townhome will need to be either repaired or replaced as it is sealed shut. The railing on the stairs going to the basement needs to be replaced and the stairs are either going to be repaired or replaced as they are clearly unsafe. The extent of this work will take a lot of time and for the safety of not only the contractors but also the residents, the unit must be fully empty.

-Safety: a full assessment will need to be done but since the door frames are being replaced, all of the linoleum/carpet will be ripped up and full paint will be applied, dust masks and safety glasses will need to be worn at all times.

-Tear out will include, but may not be limited to, flooring, carpets, door frames, doors, trim/baseboards and possibly the entire bathroom floor. Since this is the case, everything must be removed from the unit in order to allow contractors to

complete the work needed. Personal protective equipment must also be worn at all times.

-Inspection will be completed for the entire townhome including electrical and plumbing. An assessment of the stairs to the basement will also be completed. The floor in the bathroom will need an inspection as well because the flooring underneath is exposed around the toilet. Depending on the severity of the damage, the entire bathroom may need to be redone.

-Repairs will include, but may not be limited to, patching holes in the ceiling, chips in the drywall, exposed subfloor (if it can be repaired) and doorframes (if they can be repaired) will be needed. This will also require the use of dust masks, safety glasses and hard hats.

-Painting the entire townhome will be required as the walls are dirty and the paint is worn/chipped in several areas. This will also require the unit to be completely vacant.

-Bathroom renovations will be extensive due to the exposed subfloor. A new tub will be put in along with a new toilet & sink. Plumbing in the bathroom will be inspected and any repairs/replacements will be done as needed. The water supply to the unit will need to be shut off for the replacement of the tub, toilet and sink.

-Kitchen area will be assessed. If needed, new appliances will be put in the unit along with a new sink. Flooring will be replaced, requiring the disconnection of and the moving of all of the current appliances.

-Electrical systems for the unit will need to be shut off as all of the electrical cover plates and fixtures (lighting) will be replaced.

The extent of the scope of work required in this unit will most likely be greater than the items listed above. The unit will be required to be vacated in order to complete such extensive renovations as they will require a substantial amount of time to complete. It is in the best interest of the residents to vacate the unit for their own safety during the renovation process. All safety precautions will be taken by the contractors doing the renovation work and will include wearing personal protective equipment that will include, but may not be limited to, masks, safety glasses, hard hats and CSA approved safety boots."

The landlord testified that it is not anticipated that there will be structural changes. As a result no permits are required. She anticipates that it would take 3 weeks to complete the renovations provided the renovations could be worked on full time. However, it all likelihood it would be longer as her employees would be required to do work in other

units and contractors would have to be hired. The landlord further testified that she considered given a one month notice but felt it was appropriate to give the tenants a longer notice period.

The tenants do not dispute major repairs are necessary. However, they submit that the work can be completed while they are still in the rental unit. The tenants testified there are 8 empty units in the rental property and they are prepared to move to another unit on a temporary basis until the repairs are completed. The tenants submit the landlord is not acting in good faith and are attempting to evict them in order to renovate and raise the rent.

The landlord denies she is evicting the tenants in order to raise the rent. She points out that there are a number of long term tenants who have kept better care of their rental units and there is no intention to serve them with a two month Notice. The landlord testified that three of the units are in the process of being renovated.

Law:

A decision of the Supreme Court of British Columbia is binding on an arbitrator. The Supreme Court of British Columbia decision in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)* 2007 BCSC 257 includes the following passages

“7. I note that when a landlord seeks to end a tenancy for purposes of renovation, s. 49(6) of the Act sets out three requirements:

- (1) The landlord must have the necessary permits;
- (2) The landlord must be acting in good faith with respect to the intention to renovate; and
- (3) The renovations are to be undertaken "in a manner that requires the rental unit to be vacant".

.....

20 The third requirement, namely, that the renovations are to be undertaken in a manner that requires the rental unit to be vacant, has two dimensions to it.

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.

23 This interpretation of s. 49(6) is consistent with the instruction in Abrahams and Henricks to resolve ambiguities in drafting in favour of the benefited group, in this case, tenants. Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a "loophole" for landlords.

Analysis

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. It is not necessary for me to consider whether empty possession is required to complete the renovations. The tenants have stated they are prepared to move on a temporary basis to allow the landlord to complete the renovations in an efficient and timely manner. They confirmed they would be prepared to move their belongings to the alternative premises. The landlord has units that are vacant and thus it would be possible to move the tenants. The landlord estimated that it would take 3 weeks to complete the renovations (assuming the workers are working full time). Renovations tend to be longer than expected. However, this is

not an excessively long period of time. Paragraph 23 of *Berry v Kloet* states “Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required.”

As a result I order that the 2 month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. The parties must work out an arrangement between themselves as to when the landlord requires empty possession and where the tenants should move to on a temporary basis. If the parties are unable to agree either party shall have the right to apply to an arbitrator for directions..

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: August 19, 2013

Residential Tenancy Branch