



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Diversified Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property and to recover the cost of filing the Application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant submitted documents to the Residential Tenancy Branch on June 27, 2013. The Tenant stated that she delivered copies of these documents to Diversity Properties' business office on June 27, 2013. The Agent for the Landlord stated that he does not have a copy of those documents, although he cannot state that they were not delivered to Diversified Properties' business office. In the absence of evidence to the contrary, I accept that these documents were served in accordance with section 88 of the *Residential Tenancy Act (Act)*, and I accept them as evidence for these proceedings.

The Agent for the Landlord declined the opportunity to request an adjournment for the purposes of obtaining a copy of the Tenant's evidence. It was agreed that the documents would be discussed at the hearing and, if necessary, the matter would be adjourned to provide the Agent for the Landlord the opportunity to physically view the documents. The Agent for the Landlord did not request an adjournment at any point during the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

The Tenant stated that this tenancy began on February 01, 2000. The Agent for the Landlord did not dispute this testimony. The Agent for the Landlord stated that he does

not know when the Notice was served to the Tenant. The Tenant stated that the Notice was served to her by registered mail; that the mail was sent on May 21, 2013, and that she received it within a couple of days of that date.

The Agent for the Landlord and the Tenant agree that the Notice to End Tenancy declared that the Landlord was ending the tenancy because 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.

The Agent for the Landlord stated that the owner of the rental unit owns several rental properties; that the owner has renovated several of his rental units; that the owner currently intends to renovate this, and two other units, in this residential complex; that the renovations are being completed, in part, because the owner needs to remortgage the property and needs to improve the value of the complex; that the owner intends to replace all the plumbing fixtures; that the owner intends to replace the kitchen cabinets; that the owner intends to refinish the hardwood floors; that the owner intends to replace all of the window coverings; that the owner intends to replace all of the doors and trim; that he anticipates it will take 2 to 3 months to complete the renovations; and that no permits are required to complete the renovations that are planned.

The Tenant stated that she had all of the hardwood floors refinished and that they are currently in very good condition. She submitted a photograph of a portion of the living room floor, which shows the floor is in very good condition. The Agent for the Landlord declined the opportunity to request an adjournment for the purposes of viewing this photograph. He stated that he did not know the floors had been refinished by the Tenant; that the Landlord has not recently inspected the condition of the rental unit; and that it is not likely that the Landlord would refinish the floors if they are in good condition.

The Tenant stated that the Landlord replaced the flooring in the kitchen approximately three years ago and that it is currently in very good condition. She submitted a photograph of a portion of the kitchen floor, which shows the floor is in very good condition. The Agent for the Landlord declined the opportunity to request an adjournment for the purposes of viewing this photograph. He stated that the Landlord would be replacing the kitchen floor even if the flooring had recently been replaced, as the owner wishes to update the entire unit.

The Tenant stated that several years ago the Landlord replaced the tile around the bathtub with a bathtub. The Agent for the Landlord stated that the bathtub is being replaced so the wall around the bathtub would also need to be replaced, even if there is a reasonably new bathtub surround currently in place.

The Witness for the Landlord stated that he represents a contracting firm who has renovated several rental unit belonging to the owner of this rental unit; that he will be renovating this rental unit on behalf of the owner; that the renovations are being completed, in part, because the owner needs to remortgage the residential complex and needs to improve the value of the complex; that the owner intends to replace all the

plumbing fixtures; that the owner intends to replace the kitchen cabinets; that the owner intends to replace all of the doors and trim; that the owner intends to paint the rental unit; that the owner intends to refinish the hardwood floors; that if the hardwood floors are in very good condition they will not be refinished; that he anticipates it will take 2 to 2.5 months to complete the renovations to this and two other units in the complex; and that no permits are required to complete the renovations that are planned.

The Tenant stated that a city building inspector has advised her that permits would be required to complete major renovations on the rental unit, which would include replacing a bathtub and removing any hazardous material in the rental unit. The Tenant submitted an email from a Permit and Administrative Assistant with the Planning & Development Department of the City of Victoria, in which the assistant declared that “if they are planning major renovations, they would have to have permits in place”. The Agent for the Landlord declined the opportunity to request an adjournment for the purposes of viewing this email.

The Agent for the Landlord argued that the email should have limited weight, as there is no information regarding the author’s definition of a “major renovation”.

The Tenant stated that she is willing and able to vacate the rental unit for an extended period to accommodate the planned renovations. She stated that she is willing to move all of her items from her cupboards, to box them and remove them from the rental unit, and to store her larger items in a portion of the living room.

The Agent for the Landlord stated that there will be no room in the rental unit for any of the Tenant’s furniture as it will be a construction zone and the space will be needed for tools and construction supplies. He stated that the owner does not want any personal property in the unit during the renovation because of liabilities associated to damaging the personal property or liabilities associated to not being able to complete the renovations on a specific date.

The Witness for the Landlord stated that working around the Tenant’s furniture would not be “cost effective” and he is concerned that her property could be damaged during the renovation.

Analysis

On the basis of the undisputed evidence of the Tenant, I find that a Two Month Notice to End Tenancy was mailed to her on May 21, 2013. Section 90 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed which, in these circumstances, is May 26, 2013. As the Tenant is not certain when she received the Notice, I find that she is deemed to have received it on May 26, 2013.

On the basis of the testimony of the Agent for the Landlord and the Witness for the Landlord, I find that the owner of the rental unit intends to renovate the rental unit, which

includes painting, replacing bathroom fixtures, replacing window coverings, replacing doors and trim, replacing linoleum and, if necessary, refinishing the hardwood flooring. I find that these renovations are generally cosmetic.

I find that the Tenant has submitted insufficient evidence to establish that a permit is required for any of the proposed renovations. In reaching this conclusion I was influenced, to some degree, by the testimony of the Witness for the Landlord, who represents a professional contractor. As the witness renovates property on a regular basis, I find it likely that he knows when permits are required.

In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as a copy of a municipal bylaw, which shows a permit is required for renovations of this nature in the City of Victoria. In reaching this conclusion I placed little weight on the email from the Permit and Administrative Assistant with the Planning & Development Department of the City of Victoria, as the email does not establish whether the Assistant would deem the planned renovations to be a "major renovation", in which case a permit would be required.

Section 49(6)(b) of the *Act* permits a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends, in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

While I am satisfied that the Landlord intends to renovate the rental unit and there is insufficient reason to conclude that the Landlord requires permits to complete the renovations, I am not satisfied that the renovations are so extensive that the unit must be vacant in order for the renovations to be completed. I interpret the word "vacant" for the purposes of this section to mean "empty".

While I accept that the renovations might be more easily or economically undertaken if the unit were empty, I cannot conclude that the rental unit must be empty of all the Tenant's personal belongings. In reaching this conclusion I was heavily influenced by the photographs of the hardwood floors in the rental unit, which appear to be in good condition; by the Tenant's testimony that the hardwood floors are in good condition; by the Witness for the Landlord's testimony that the floors will not be refinished if they are in good condition; and by the Agent for the Landlord's testimony that the unit has not been recently inspected and he does not know if the hardwood floors need to be refinished. In circumstances where hardwood flooring needs to be refinished, I find it is often impractical to work around furniture in the rental unit. I find that the Landlord has submitted insufficient evidence to show that the hardwood floors need to be refinished. As I am not convinced the floors need to be refinished, I find that there is no need to have vacant possession of the rental unit for refinishing the floors.

I find that the remainder of the planned renovations can be completed if the Tenant removes most of her personal property from the unit and only leaves her furniture in the unit. Although the property may have to be moved to accommodate painting and

replacing trim, I find this is a minor expense and that it is a cost that the Landlord must bear.

The purpose of section 49(6) of the *Act* is not to provide a landlord with a means of ending a tenancy. Rather, it provides landlords with the ability to complete renovations. Where it is possible to complete renovations without ending the tenancy, section 49(6) should not be applied. 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 illogical to believe that section 49(6) of the *Act* could be used by a landlord to end a tenancy where the Tenant agrees to vacate the premises for a period of time that will accommodate the renovation.

As this Tenant is willing to vacate the rental unit for a period of up to three months for the purposes of the Landlord completing the renovations, I am not satisfied that the Landlord has grounds to end this tenancy pursuant to section 49(6) of the *Act*. I therefore set aside the Notice to End Tenancy for Landlord's Use of Property.

In reaching this conclusion, I find that the renovations being proposed by the Landlord are not extensive and that, with reasonable diligence, the Landlord should be able to replace the kitchen cupboards, replace the bathroom fixtures, and paint the rental unit in less than 6 weeks.

Conclusion

I find that the Tenant's application has merit and I authorize her to reduce one monthly rent payment by \$50.00 in full compensation for the fee paid for filing this Application for Dispute Resolution.

The Landlord retains the right to serve the Tenant with another Two Month Notice to End Tenancy if the Tenant does not agree to move out of the rental unit for a reasonable period of time to facilitate these planned renovations.

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 08, 2013

Residential Tenancy Branch

