



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LAT

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to authorize the tenant to change the locks to the rental unit.

The tenant served the landlord with a copy of the application, an amended copy of the application and Notice of Hearing documents by registered mail. The landlord confirmed receipt of the hearing documents and amended application and based on this I find the landlord was served with the documents in accordance with the Residential Tenancy Act (referred to as the *Act*).

The landlord appeared with the co-landlord for the hearing and the tenant appeared with an advocate. The landlord and tenant gave affirmed testimony during the hearing and also provided documentary evidence in advance of the hearing which was served to all parties in accordance with the *Act*.

During the hearing, the rights and obligations of the landlord in regards to entry into the rental suite under Section 29 (1) (b) and Section 88 (g) of the *Act* were explained to the tenant and as a result, the tenant withdrew her portion of the application in regards to authorizing the tenant to change locks to the rental unit.

Issue(s) to be Decided

- Should the Notice to End Tenancy be cancelled?

Background and Evidence

Both parties agreed that this month to month tenancy was due to start on August 1, 2012 in accordance with the written tenancy agreement. Rent in the amount of \$600.00 is payable on the 1st day of each month, and the landlord collected a security deposit

from the tenant in the amount of \$300.00 and a pet damage deposit of \$300.00, both on August 1, 2012. The tenant testified that she engaged in doing repairs to the rental suite up until August 25, 2012 after which point she took full vacancy of the rental suite.

Both parties agreed that the landlord served the tenant personally with a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 29, 2013. The notice was submitted as evidence and shows the reason for ending the tenancy selected by the landlord on the second page was 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 effective date of the notice is December 1, 2013.

The landlord testified that the rental suite was originally constructed for the use of the pastor of the local church and in 1997 was converted to a duplex unit. However, the small congregation could not afford a pastor so part of the duplex was opened up for rent by the landlord. In September, 2012, it came to the landlord's attention that the rental suite was experiencing some mould and structural issues. The landlord had personally done a number of inspections of the rental suite and suspected that there may be extensive mold in the rental suite as there was a leaking kitchen pipe under the sink, damp in the walls and rot around the unit windows.

As a result, the landlord hired a professional registered home inspector to assess the issues. The home inspector provided a written report dated October 18, 2013, which was submitted as evidence. The report starts by detailing the home inspector's credentials and extensive experience and then goes on to say that the water leaking from the roof and kitchen plumbing has leaked into the wall cavity at the front of the home and in some cases has run down the wall all the way to the basement. The inspector in his report provides photographs showing the moisture damage in the basement from the leaking roof and kitchen plumbing, mold and structural rot starting in the floor joists and rim joists below the kitchen, and structural rot around the basement door on the front of the home.

The inspectors report goes on to detail the dry rot and mold damage caused to the windows on both floors at the front of the home which has led to rot in the structural wall members; this has been caused by condensation on the aluminum windows. The report documents photographs of rotten structural framing around the windows.

The inspector's report then details the damage to the exterior of the home, by rain water splash as a result of not having gutters, to the extent that the stucco finish, the wall

sheathing and framing are rotting at the base plate and the bottoms of the studs of a load bearing wall which is compromising the structure.

The home inspector details the remedy in this case as follows: the fix is to remove the old roof and replace with a new one. The entire mold on the drywall and insulation must be removed and disposed of properly. The structural wood framing must be washed with a mold killer and rotted wood must be replaced by a professional carpenter. Once the wall has been opened on the inside of the home, it can then be determined how much of the stucco and plywood on the exterior of the wall needs to be replaced.

The landlord testified that the home inspector verbally told him that the entire unit was likely to be affected by mold and structural damage; this was based on readings the home inspector had taken in relation to heat loss around the rental suite, which showed that the structural integrity had been compromised.

The landlord testified that he spoke with a city official about obtaining permits to complete the repairs. The landlord testified that the city official, whose contact details were provided, stated that no permits were required for this type of work and provided the landlord with a copy of a document which the landlord submitted as evidence and details Section 209 of the relevant by-law relating to 'Scope and General Exemptions'. The landlord testified that the city official wrote on the bottom of the document "Permit is not required under By-Law for non-structural work involving only replacement of existing construction e.g. roofing, siding, windows and doors, cabinetry, carpets and insulation". The document also highlights that the by-law does not apply to 'non-structural repairs or alterations to a building or structure or the replacement or repair of plumbing works'.

The landlord also submitted a quote for the replacement of the kitchen cabinetry and installation of a kitchen countertop. The quote states that the lead time for installation of cabinetry is 6-8 weeks and that the countertop installation is 3-4 weeks, although the countertop should not be ordered until the cabinetry is in place for measurements.

The landlords both testified that the reason why they needed the property vacant by the tenant is because the interior walls will need to be opened, windows will need to be taken out, flooring and kitchen cabinetry will need to be removed, the power and water will need to be shut off for long periods of time, new plumbing will need to be installed and appliances will need to be removed. The landlords expressed their concern for the tenant's safety and testified that if the tenant were to remain in the unit whilst this work was being done then she would not have access to essential services and be exposed to chemicals and mold spores that could potentially affect her health and feel they have a duty of care towards her.

The tenant testified that the landlord had left roofing material at the side of the house and had told the tenant that he would be repairing the roof in the spring of 2013; however, this was not done. The tenant testified that when she entered into the tenancy she had done a lot of the repairs and had used chemicals to get rid of the little mold there was in the unit.

The tenant testified that she is comfortable in the rental suite and has no concerns over her own health that would cause her to leave the tenancy stating that the landlord's had provided no evidence of how the repairs would affect her health. The tenant also testified that she would be willing to move out for a temporary amount of time whilst work was being done; however, when she was questioned about the maximum time and frequency she would be willing to leave the rental unit, the tenant explained that the landlords had not provided any evidence to show a schedule of works, how long the work would take and the potential cost of such repairs, making it difficult for her to answer this question as this would only be based on speculation. The tenant also testified that the landlord did not intend to do any of the work.

The landlord testified that it would be reasonable to any person that such repairs and renovations would not be able to be done over a short period of time and would require extensive work over a long period of time. However, the landlord confirmed that he was not in a position to get this work done quickly as it would involve a large cost which he could not afford and that the work is intended to be done by the church congregation volunteers on weekends and after hours.

The landlord testified that there had been a large delay in giving the notice to end tenancy to the tenant as a past attempt to give the notice at the end of June, 2013 had been unsuccessful due to the landlord's notice not meeting the requirements of the *Act* which was determined in a previous hearing on August 7, 2013.

The tenant and landlord submitted additional evidence for this hearing which detail: repairs that the tenant has carried out which the landlord claims were unauthorized; and, notices issued to the landlord by the tenant asking for repairs to be done to the rental suite.

Analysis

Section 49(8) of the *Act* states that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property by making an application within 15 days after the date the tenant receives it. Therefore, I find that the tenant made the application

within the time limit afforded under the *Act*. I also find that the contents of the notice to end tenancy in the approved form meet the requirements of the *Act*.

When a landlord issues a tenant with a notice to end tenancy under Section 49 (6) of *Act*, the landlord bears the burden of proof on the balance of probabilities to prove the following:

- the landlord has the necessary permits and approvals required by law,
- the landlord is acting in good faith with the intention to renovate; and
- the renovations or repairs require the rental unit to be vacant.

In relation to these requirements of the *Act*, I make the following findings.

The landlord provided a document detailing the city by-laws in relation to non-structural work and the landlord provided the details of the city official he spoke to about this and cites the official's hand-written note at the bottom of the document eluding to the fact that a permit is not required for the work that the inspector detailed. Based on this, I am satisfied that a permit or approval is not required for the work that the landlord is contemplating as the landlord is not making changes to the building but repairing existing elements which have been damaged.

Based on the evidence of the landlord, I am satisfied that the landlord has given the notice to end the tenancy in good faith to the tenant and possesses no ulterior motive to end the tenant's tenancy. I find that the landlord had the intention of ending the tenancy earlier based on a notice to end tenancy issued to the tenant in June, 2013 which did not meet the requirements of the *Act*. The landlord provided a quote for the installation of the cabinetry and counter worktops which is evidence of an intention to renovate and, I find that the landlord has satisfied me that he intends to conduct the work using the community volunteers on the weekends and after hours.

The tenant argued that the landlord had failed to provide a schedule of works which would then be able to give her an idea of the time and frequency she could leave the rental suite while the work was being conducted. However, I find that based on the inspectors detailed report, which was recently conducted and provided as evidence to support the landlord's case about the type and extent of the renovations that are required to the rental suite, the unit will need to be vacant for this work to be carried out. This would involve work that could potentially lead to the removal of items necessary for essential services for the tenant and I find that there is strong likelihood that the tenant could be harmed during the renovations from mold exposure and placed at risk from

structural repairs. I also find that it is unlikely that the tenant will be able to practically move in and out of the rental suite during these renovations and repairs, even though the tenant indicated that she was willing to do so, and as a result, I find that the work can only be done by terminating the tenancy.

Having examined the undisputed contents of inspectors report, I find that the author is credible and experienced. This report is a key piece of evidence that satisfies me that the renovations by their nature, which include but are not limited to: the opening of walls to expose outside stucco; removal of the roof and windows; mold remediation; kitchen replacement; and plumbing repairs, are so extensive that the rental suite is required to be vacant in order for them to be carried out.

As a result, I find the 2 Month Notice to End Tenancy issued to the tenant on September 29, 2013 is valid and should not be cancelled.

Conclusion

For the reasons set out above, I hereby dismiss the tenant's application to cancel the notice to end tenancy without leave to re-apply.

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: November 18, 2013

Residential Tenancy Branch

