Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group Canada Ltd. and Huntly Investments Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This was a hearing with respect to joined applications by six named tenants to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The two named tenants called in and participated in the hearing and the landlord's representatives called to provide evidence and make submissions with respect to the reasons for the Notices to End Tenancy.

Issue(s) to be Decided

Should the two month Notices to End Tenancy for landlord's use dated November 1, 2013 be cancelled?

Background and Evidence

The rental property is a house in Vancouver, presently rented as a rooming house. There are seven rental units in the house varying in size and there are six tenants living in separate units in the rental property. The landlord served each of the six tenants with a two month Notice to End Tenancy for landlord's use. Each of the Notices was dated November 1, 2013 and required the named tenant to move out of the rental unit by January 31, 2014.

The Notices to End Tenancy were given pursuant to section 49 (6) (e) of the *Residential Tenancy Act*, which provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The six tenants each filed separate applications to dispute the Notices to End Tenancy. The applications were submitted to the Residential Tenancy Branch at one time and they were treated as "joiner" applications and set down to proceed as one hearing.

Because all the affected tenants have applied to dispute the Notices to End Tenancy, the landlord has the burden of proving that it has all the permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord's representatives submitted documentary evidence including photographs and drawings of the rental property. Along with the Notice to End Tenancy given to each tenant, the landlord provided a notice on its letterhead, titled: "**A VERY IMPORTANT NOTICE**". The Notice said in part that: "This notice is issued under the 2-Month Notice provision as the Landlord will convert the overall building to a Manager/Caretaker's residence and this requires all tenants to vacate the (street address) property."

The landlord's representatives described the reasons for the decision to use the rental property as a caretaker's suite. The landlord said that the rental property was originally a single family residence, built more than 70 years ago. The house was later converted for use as a rooming house with shared bathroom facilities. The rental units are authorized by the City, but they are not legal suites and do not conform to current codes and by-laws. The landlord conducted an assessment of the rental property and determined that the house has reached the end of its useful life. In a written submission the landlord said:

> The roof needs to be replaced. The wooden fire escape on the back of the house is questionable and needs to be replaced. The back room on the main floor (which is an addition) is threatening to fall away from the house. It has been temporarily shored up but should be vacated. The plumbing throughout the house needs to be replaced and upgraded. Much of the piping is Wolverine copper plumbing and is riddled with pinhole leaks throughout the house. In the last year we have had numerous floods from burst pipes. It is questionable how long the third floor bathroom can be maintained as functional. We believe a failure is imminent and with no second bathroom, resident s will be confined to the single bathroom on the second floor. The electrical service for the house has become inadequate to safely provide power to each resident. With today's modern appliances, their individual cooking and appliance needs (each occupant appears to have a makeshift kitchen) far exceed the houses small electrical panel. Residents have compensated by replacing the 15 amp fuses with 30 amp

> fuses. The landlord to remedy the situation has been advised by its electrician to reinstall the 15 amp fuses and lock the panel. This is critical because the existing wiring is very old throughout most of the house, and may pose a fire hazard. Residents will find this will result in frequent blown fuses, a situation the landlord does not think is acceptable. (reproduced as written)

The landlord went on to say that:

> Rather than having the building demolished, the landlord now intends to return the home to its original purpose of a single family dwelling. This would lessen the load on the failing building systems, create a safer building and perhaps result in some additional useful life.

The landlord said that it proposes to have a caretaker/manager live in the rental property and to manage an adjacent rental property that does not currently have a manager and is currently overseen by the manager of another building located a few blocks away. The landlord acknowledged at the hearing that the adjacent property is another separate rental property from the property that is the subject of this application, but the landlord said in its submission that: "Having an on-site manager for this group of buildings is advantageous for security and safety reasons."

The applicants provided a written submission in response to that of the landlord. The landlord had a copy of the tenants' submission at the time of the hearing; a copy was provided to the Residential Tenancy Branch as well, but was apparently mis-filed and not available to me at the time of the hearing. After the hearing was concluded, I obtained a copy of the tenants' documentary evidence and I have considered it prior to making my decision in this proceeding.

The tenants who participated in the conference call hearing disagreed with much of the landlord's evidence concerning the state of the rental property. The tenants denied that there have been any flooding problems. There have been no roof leaks. They noted that a significant amount of the plumbing has been replaced and the remaining 40% could also be replaced as well. The tenants provided a copy of the tenancy agreement for the tenant Mr. M.S. and noted that his tenancy is for a fixed term that does not end until May 31, 2014. The tenants said that two months ago the landlord turned off the supply of water to M.S.'s suite although water is included under his tenancy. The landlord has not responded to requests concerning the restoration of water to his suite. The tenants noted that the landlord does not have approvals and permits that will be necessary to convert the rental property to a single family dwelling.

The tenants testified that in May, 2012 the landlord evicted an occupant of a nearby rental unit for the same reason as the subject Notices to End Tenancy were given, namely: for use by a caretaker of the residential property. The applicant, Ms. A.A. testified that the unit remained vacant since last May and in September the landlord offered to rent the unit to her for $1,500.00, which is $360.00 more per month than was paid by the former occupant. Ms. A.A. said she declined the offer and the unit continues to be vacant.

The tenants disputed the landlord's evidence concerning the condition of the rental property generally. They said the fire escape has been recently rebuilt and is in good condition. The main floor back room has new cement foundations poured and new posts and joists installed as a permanent repair. The tenants said that the room is not threatening to fall away from the house. They included photographs of the repair as part of their documentary evidence.

With respect to the alleged electrical problems, the tenants said that the electrical system uses old style glass fuses. There are only two residents who have access to the fuse panel in the basement. They said that neither resident has ever replaced any of the glass fuses, let alone replaced them with higher rated fuses. The tenants submitted that in 11 years only one fuse was replaced and this was done by the landlord's handyman. The tenants doubted the landlord's good faith when it came to the stated intention of replacing all the fuses with 15 amp fuses. The tenants said that there were likely 20 amp fuses, in keeping with modern appliance requirements and if anyone, whether a single tenant or multiple occupants were to live in the property, the electrical panel would need to provide that capacity.

Analysis

I find that there are several reasons why the six Notices to End Tenancy that are the subject of these applications are invalid and why they should be cancelled. First, at the hearing, the landlord acknowledged that permits and approvals are required from the City before the rental property can be converted from its currently approved use as a rooming house to a single family dwelling. The landlord has not applied for and has not obtained the necessary permits and approvals. The *Residential Tenancy Act* makes it plain that the landlord must have the required permits in hand before it issues a Notice to End Tenancy for landlord's use.

The second reason for setting aside the Notices is because the landlord's intended use for the rental property as a single family residence is predicated upon obtaining vacant possession by ending all the tenancies effective January 31, 2014, however, one of the

tenancies is for a fixed term that will not end until May 31, 2014, four months after the stated effective date of the Notices. Section 49 (2) (c) of the Act provides that if the tenancy is a fixed term tenancy, a section 49 Notice may not end the tenancy on a date that is earlier than the date specified as the end of the tenancy. I therefore find that these Notices have been given prematurely; there is no reason why any of the tenancies should be ended before May 31st, particularly where, as here, the landlord does not have permits to do necessary work in hand.

The final ground for my conclusion that the Notices should be set aside is based on the wording of section 49 (6) (e) of the Act which states that the landlord intends to: "convert the rental unit for use by a caretaker, manager, or superintendent of ***the*** rental property". (emphasis added). The landlord's representatives said that the landlord intends its caretaker/manager to live in the whole of the rental property, but to manage not *the* rental property, but other rental properties in the vicinity. The section in question contemplates the occupancy of a unit in the rental property for the purpose of managing the whole of the rental property, not as proposed here, to use the whole of the property for a manger of other properties to live in.

Conclusion

I find that the six applications before me should be granted and each of the notices to end tenancy are therefore cancelled. The tenancies will continue until ended in accordance with the provisions of the *Residential Tenancy Act*. The tenants are entitled to recover the filing fees for these applications. They may deduct the filing fees from future instalments of rent due to the landlord in the amount of $50.00 as the filing fee for the main application brought by Ms. A.A. and $25.00 for each of the five subsidiary applications filed by the other tenants.

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 30, 2013

Residential Tenancy Branch