



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, CNC, MNDC, RP

Introduction

This hearing dealt with cross applications. The landlord is seeking an order of possession. The tenant is seeking an order to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside and a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about 2009. Rent in the amount of \$1936.11 including parking is payable in advance on the first day of each month. The present landlord purchased and took ownership of the suite on January 21, 2014.

The landlord gave the following testimony:

The landlord stated that she intends to conduct a complete renovation to the suite. The landlord is concerned that the unit might have water ingress, mold and structural wear due to it previously being a leaky condo. The landlord stated that she has extensive experience with leaky condos and the requirement to remedy all water issues. The landlord stated that the renovation will take 3-6 months to complete at a cost of approximately \$15000.00. The landlord stated that she wishes to renovate both bathrooms with tile and shower insert, new kitchen cabinets, install hardwood floors and paint the suite. The landlord issued a Two Month Notice to End Tenancy for Landlords Use or Property on March 25, 2014 with an effective date of May 31, 2014.

The tenant gave the following testimony:

The tenant stated that the suite used to be a leaky condo but was fully renovated in 2009. The tenant stated that the unit is not high end but it's new and clean. The tenant stated that she will gladly accommodate the workman to allow her to stay in the unit. The tenant stated that the landlord may have permits but doesn't require that the work be done. The tenant stated that the landlord has no proof of mold or water leaking into the unit and should be disregarded.

Analysis

Sections 49(6)(b) of the Act, pursuant to which the notice to end tenancy was issued, provide as follows:

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:

49(6)(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

In respect to the renovations, the landlord must show that that (a) they have all the necessary permits and approvals required by law; (b) they intend in good faith to renovate; and (c) the intended renovations require the rental unit to be vacant.

I accept that the landlord has permits to conduct the work as claimed and that she intends to carry out that work. However, the landlord has not satisfied me that the unit need be vacant to conduct the work. The estimate provided by the inspector is \$5800.00. The permits submitted by the landlord herself refer to cosmetic work. The landlord has failed to illustrate that the scope of work would require vacant possession as much of it is cosmetic with very little change to structure.

Based on the above and on the balance of probabilities, I am not satisfied that all of the proposed renovations cannot be accomplished while the tenant remains in the suite and as a result, the landlord's Notice to End for Landlord's Use of Property dated March 25, 2014 is cancelled, and is of no effect.

The tenant was seeking \$1000.00 as compensation for having to deal with the hearings over the past several years and \$109.97 for the cost of postage and photocopying her documents in preparation of these hearings. In relation to the postage and photocopying, these are costs of litigating ones case and are not prescribed for recovery under the Act; accordingly I dismiss this portion of their claim.

In relation to the claim of \$1000.00;

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant **must satisfy** the following **four** elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to satisfy me of any of the grounds as listed above. The tenant made references to property managers and previous owners but was not specific about this particular owner. Based on the above I dismiss that portion of the tenants' application.

The tenant is entitled to the recovery of the \$50.00 filing fee. The tenant is entitled to a one time rent reduction of \$50.00 from the July 2014 rent due. The rent due July 1, 2014 will be \$1886.11 including parking.

Conclusion

The Notice dated March 25, 2014 is set aside.

The landlords' application is dismissed.

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: May 28, 2014

Residential Tenancy Branch

