



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL CNL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on May 30, 2014 to obtain an Order of Possession for landlord's use of the property.

The Tenant filed on May 14, 2014, to cancel a 2 Month Notice to end tenancy for landlord's use of the property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Each party was provided an opportunity to ask questions about the process, as explained in the recorded message at the outset of this proceeding. Each party declined to ask questions and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued April 30, 2014 be upheld or cancelled?
2. If upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on September 2, 2005. The Tenant was required to pay rent of \$550.00 at the start of the tenancy and rent has since increased to \$705.00 payable on the first of each month. On or before September 2, 2005 the Tenant paid \$275.00 as the security deposit.

The Landlord testified that on April 30, 2014 they personally served the Tenant with a 2 Month Notice to end tenancy for landlord's use for the reason that:

The landlord has all 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 Landlord submitted that the owner purchased this property in 1995 and the duplex was built in approximately 1971. The owner has retained a contractor to renovate the rental unit and change it back to a side by side conforming duplex. The property is currently used as a non-conforming 3-plex with side B rented as a main floor with a basement. The Tenant rents the main floor of side A and there is a suite in the basement of side A. All three units have their own utility meter and separate electrical and plumbing and the Tenant's unit has all original. The basement suite in side A, below the Tenant's unit has been vacant since December 2013 and the Landlord regained legal possession in February 2014.

The Landlord testified that the owner has been conversing with the contractor for several months and has determined that permits are not required as the work will only involve cosmetic upgrades to the Tenant's kitchen and bathroom. The Landlord submitted that the plan is to remove all kitchen and bathroom fixtures, appliances, cabinets, and flooring simultaneously which will leave the unit uninhabitable. All current electrical and plumbing is done to code and the renovations will involve cosmetic items such as cabinets, painting, and possibly new flooring if the budget allows. The owner intends to remove the kitchen from the basement suite in side A and change side A to a 4 bedrooms, 2 bathrooms, 1 kitchen unit with a main floor and basement.

The Tenant disputed the eviction notice and stated that he is willing to do what he has to do to accommodate the renovations. He argued that he is a single dad and has been raising his children in this unit for almost 9 years and does not want to have to move his family to accommodate renovations.

The Tenant requested that he be allowed to use the kitchen and bathroom in the vacant basement suite during the renovations, as this would allow his family to continue to reside in the unit. He argued that he believes this is not an eviction to allow renovations; rather, he thinks the Landlord wants him to move out because he requested proof that the basement hot water tank was not connected to his electrical service and meter.

The Tenant questioned why a kitchen and bathroom renovation would require him to move his family. He argued that several years ago there was a major roof leak and the repairs involved removal of all of the drywall and insulation from the living room walls. He stated that they were living with no walls or heat in the middle of winter during those repairs and he was not required to vacate the unit back then. He also noted that the kitchen linoleum had been replaced during his tenancy and he was not required to vacate the unit at that time. The Tenant also questioned why the basement suite kitchen will be removed when it was renovated only a short time ago.

The Tenant stated that the Landlord's handyman was conducting renovations in the basement suite in February or March 2014. The handyman told him that the power had been shut off for months but there was still hot water in the suite which means that hot water tank is connected to the Tenant's power. This concerned the Tenant because he is required to pay for the electricity in his unit and was told the basement suite was on a separate meter.

The Tenant submitted that he sent several text messages and a letter to the Landlord wanting a licensed electrician to provide him proof of how the basement suite hot water tank was hooked up. Shortly afterwards the Handyman and his helper attended his unit to say the hot water tank was not connected to his power and was on its own breaker. He did not get a written response from the Landlord and has not seen any documentation from a licensed electrician to prove how that hot water tank was connected. He is concerned that he has been paying for another tenant's hot water since 2005 so he would like written confirmation about which meter that hot water tank is attached to. He was served the eviction notice a month or so later.

The Landlord confirmed that some upper cabinets were installed in the basement suite kitchen last fall. It was not a completed renovation; just a few more cabinets were added.

The Landlord indicated that she did not have full authorization to enter into a settlement agreement on behalf of the owner; therefore, she could not respond to the Tenant's request to use the basement suite bathroom and kitchen during renovations. She

indicated that she had had a discussion with the owner about how she would go about making an application to raise the rent once the unit was changed into a 4 bedroom two bath unit.

The Landlord argued that it is the owner's intent to sell this property. She had it listed in 2008, 2009, 2010, 2011, and 2012 and did not have any offers during that time. The owner has decided to renovate the property in anticipation of re-listing the property for sale.

The Tenant argued that the tenant of side B had not been issued an eviction notice and asked if side B would be scheduled for any renovations, as it is of the same age and character as his unit is.

The Landlord stated that some upgrades had been completed on side B in the past and that the renovations are fully dependant on the budget. She confirmed that the tenant of side B had not been issued an eviction notice as there are no plans at this time to conduct renovations in her unit.

In closing, the Landlord confirmed receipt of the Tenant's text messages about the hot water tank and stated that she thought that matter had been resolved. She had not seen a letter from the Tenant in regards to that matter. She recalled seeing an invoice from an electrician who determined that the hot water tank was on its own breaker. In the interest of resolving the basement suite hot water tank concerns, the Landlord agreed to have a licensed electrician provide written documentation to the Tenant that outlines which electrical panel the basement suite hot water tank is wired to and which meter it is attached to.

Analysis

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy two tests as set forth under the *Residential Tenancy Act*. Section 49 (6) (b) of the *Residential Tenancy Act* states that a landlord may end a tenancy in respect of a rental unit if:

- 1) The landlord has all the necessary permits and approvals required by law;
- 2) And intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Permits - Based on the testimony and documentary evidence, I accept the Landlord's submission, the plumbing and electrical systems are all up to code, and the renovations

involve cosmetic upgrades to the Tenant's kitchen and bathroom and do not require permits.

Good Faith - The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the "good faith" requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

*"[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.

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."

After careful consideration of the above, I do not accept that it is a mere coincidence that the Tenant was issued an eviction notice a few weeks after sending a written

request to the Landlord requesting proof of which power meter the basement suite hot water tank was wired into.

Furthermore, I find there to be insufficient evidence to prove the Tenant must vacate the rental unit so that the Landlord can have renovations completed. I make this finding in part because the renovations are, as described by the Landlord, "cosmetic". The Tenant is willing to accommodate the renovations and use the kitchen and bathroom facilities that are currently in place in the basement suite. While it is desirable and maybe more cost effective for the Landlord to have the contractors demolish the kitchens and bathroom at the same time, there is no evidence to support that the work could not be completed one room or one floor at a time; which would allow the Tenant and his family to continue to reside in the unit.

Accordingly, I uphold the Tenant's request to cancel the 2 Month Notice and I dismiss the Landlord's application for an Order of Possession.

In regards to the Landlords intent of changing the rental unit configuration, caution the Landlord that section 14 of the Act stipulates that a tenancy agreement may not be amended to change or remove a standard term; however, the tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Conclusion

The 2 Month Notice to end tenancy for landlord's use issued April 30, 2014, is HEREBY CANCELLED and is of no force or effect.

The Landlord's application is DISMISSED, without leave to reapply.

The Landlord agreed to provide the Tenant with written documentation from a licensed electrician regarding the wiring of the basement suite hot water tank.

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 09, 2014

Residential Tenancy Branch

