



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated May 25, 2014 and for a repair order regarding a bathroom floor.

The Notice was given pursuant to s. 49(6)(b) of the *Residential Tenancy Act* (the “Act”) which provides:

(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:

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

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlords have a good faith intention to conduct renovations that require the rental unit to be vacant?

Background and Evidence

The rental unit is a bachelor apartment in a nine unit building. The building was constructed as a private home in or around 1912 and has undergone various conversions over the years to its present, apartment building style.

The tenancy started in September 1994. Apparently there is/was a written tenancy agreement but neither side produced it at hearing. The monthly rent is \$480.00. The landlords hold a \$207.50 security deposit.

The tenant claims to have lived in other suites in the building since 1978. His landlord has been Ms. V.F.’s uncle, a Mr. J.M.. She and her partner the respondent Mr. M.R. have taken over responsibility for the building.

Over the past few years a number of significant renovations and improvements have been made. The building has a new roof, new fire escape and new landings have been added. Four of the nine suites have already undergone renovation by Mr. M.R. who is a contractor. Each of those suites, when they became vacant, were “gutted” and new flooring, cabinetry, and appliances were added.

The landlords say they want to proceed with the renovation of the remaining five suites, starting with this one. They renovations are to be conducted one suite at a time because Mr. M.R. is working on them on his own and because the landlords want to maintain some cash flow from the other four suites to be renovated.

Mr. M.R. intends to gut this suite and make it “brand new” with a “total reno” involving the removal of “everything” inside and full remodeling including a new subfloor. He is considers that the renovation will take four to six weeks. He says he will be working on it full time.

Once renovations are complete the landlords intend to charge a new rent of \$750.00 per month instead of the present \$480.00. As I understand it they are willing to rent the renovated suite to the tenant at that amount.

Mr. M.R. testified that no permits or approvals are required for this work because he will not be moving any plumbing or wiring and it’s an interior renovation.

Mr. M.R. was of the view that it was not economical to continue renting the suite as it is presently. He did not elaborate on this point.

The tenant says he’s happy to stay and will make accommodations while the work is being done. He says the cabinets are “pre-packaged” implying that only a brief interruption would result during their installation.

He complains that water has been leaking under his shower curtain for a number of years and that as a result some of the floor tiles in the bathroom require repair.

Analysis

It can be said that it is the natural view of a property owner in the business of renting residential property that if he or she wants to expend the money to improve the property he or she should be free to increase the rent to recapture that cost and to maximize return.

The courts have not seen it this way.

The *Act* is consumer protection legislation and ambiguities in the interpretation of the *Act* should be resolved in favour of tenants – Masuhara J., *Samji v. HFBC Foundation* 2012 BCSC 1367.

The law to be applied in the circumstances of a two month Notice to End Tenancy for repair or renovation has been set out in at least two decisions of the B.C. Supreme Court: *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, Slade, J., and *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Williamson, J.

In the *Berry* case, Mr. Justice Williamson confirmed that the *Act* is a statute that seeks to confer a benefit upon tenants; it seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in the favour of the benefited group; the tenant.

He indicated that section 49(6)(b) of the *Act* sets out three requirements:

- (a) The landlord must have the necessary permits;
- (b) The landlord must be acting in good faith with respect to the intention to renovate; and
- (c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.

In regard to the third requirement, he indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant, empty, in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to

carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

In this case, I find the landlords have a good faith intention to renovate. However, the landlords have not satisfied me that the renovations contemplated require that this tenancy be terminated in order to carry them out.

In regard to the tenant's claim for a repair order, the evidence he presented was scant and falls far short of establishing that a repair is required or that the landlords have refused the repair after being notified and given a reasonable opportunity to inspect and, if required, carry out the repair.

Conclusion

The tenant's application to cancel the two month Notice to End Tenancy dated May 25, 2014 is allowed. The Notice is hereby cancelled. The balance of the tenant's claim 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: July 15, 2014

Residential Tenancy Branch

