



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF
 CNL RP FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their amended application as not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for landlord's use to make repairs to the unit. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for cause and his request to have the Landlord make repairs; and I dismiss the balance of the Tenant's claim with leave to re-apply.

Introduction

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

The Landlord filed their application December 11, 2014, to obtain an Order of Possession for landlord's use of the property and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed their application November 06, 2014, to cancel a 2 Month Notice to end tenancy for landlord's use of the property and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her translator, and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined 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 dated October 30, 2014 be upheld or cancelled?
2. If cancelled, should the Landlord be ordered to make repairs to the unit side or property?

Background and Evidence

It was undisputed that the Tenant has occupied this rental unit since April of 1995 or 1996 and entered into a tenancy agreement with the previous owner. The Tenant is required to pay rent of \$900.00 per month. The current Landlord purchased the property on October 1, 2014, and the Tenant was required to pay the new Landlord a security deposit of \$450.00.

The Landlord testified that the rental unit is a basement suite located on one side of a duplex. The Landlord stated that she purchased only one side of the duplex effective October 1, 2014 which has a rental unit on the main floor and the Tenant's rental unit in the basement.

The Landlord submitted documentary evidence which consisted of, among other things, copies of: the Landlord's written statement; pages 3 to 8 of an 8 page Home Inspection Report; and a list of requested repairs written by the Tenant.

The Landlord adduced that she had a building inspection completed prior to purchasing the property, which was provided in her evidence. She noted that that report lists several required repairs which match most of the six items the Tenant requested to have repaired. The Tenant's written requested repairs could be summarized as: 1) exterior hose bib leak & soffit repair; 2) laundry room dryer not working and no hot

water; 3) kitchen counter top and sink need replacing; 4) bathroom ceiling leaks and tub walls need repair; 5) bedroom ceiling leaks from upstairs tub and requires repairs; 6) no thermostat in basement to control heat.

The Landlord stated that due to the required repairs they need to have the rental unit empty to be able to complete the repairs "in one go". So on October 30, 2014 they served the Tenant with a 2 Month Notice which was issued pursuant to section 49(6) of the Act and listed the following reason:

- *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 argued that the unit needed to be empty because they need to remove and replace the entire kitchen, spray paint all ceilings and walls; and repair the unit from floor to ceiling. They are concerned that the Landlord and his son could not live in the unit while the repairs were being completed.

The Tenant testified that the Landlord has ulterior motives to evict him. He stated that the previous owner tried to evict him on September 19, 2014 by giving him a 10 Day Notice, even though his rent had been paid. He argued that the previous owner tried to get him to move out by September 29, 2014, before the new owner took possession. He disputed the 10 Day Notice and it was cancelled.

The Tenant submitted that both sides of the duplex were sold at the same time and the same man who tenants from the other side told him was their new landlord has been the person who attends his rental unit to pick up the rent. For clarity sake this man will be referred to as Sam for the remainder of this decision. The Tenant noted that Sam has attended his rental unit on several occasions with the Landlord's son and Sam was the person who told the Tenant he had to pay a security deposit. So on October 1, 2014 the Tenant wrote the Landlord a cheque for the \$450.00 security deposit.

The Tenant testified that Sam and the Landlord had had conversations with his girlfriend when they told her that they were intending to close off the carport to make another room and were going to change the laundry room to install a shower. The Tenant stated that he called the municipality on January 6, 2015 and confirmed that no permits had been requested or issued for this property.

The Tenant argued that he believes the Landlord wants him out so they can charge a higher rent. He stated that the tenant in the basement suite next door is paying

\$1,050.00 per month which is \$150.00 more than his rent and he suspects that the Landlord is looking to get more rent money.

The Landlord refused to clarify Sam's position in relation to this rental property; she did however confirm that Sam picks up the rent and will be involved in getting the repairs completed. The Landlord confirmed that she asked the previous Landlord to evict the Tenant. She argued that the building inspection was completed prior to her purchasing the property so she knew what work had to be performed and she wanted the unit vacant prior to her purchasing it so she could conduct the repairs. The Landlord denied that she talked about making changes to the carport and confirmed that she had discussions about proposed changes to the laundry room. She acknowledged that they have not applied for permits to conduct any of the renovations or repairs.

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.

Based on the testimony and documentary evidence the Landlord has not applied for permits for this property. That being said, if the scope of the renovation work is only replacing kitchen cabinets, sinks, plumbing and repairing and repainting interior drywall, then the Landlord may not require permits for that type of work.

The Tenant disputed the eviction notice and argued that he should not have to vacate the rental unit.

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 foregoing, documentary evidence, and on a balance of probabilities I find that the scope of the work being planned, as described in this hearing, would not require the rental unit to be vacant. While I agree that it would be easier for the Landlord to “fix everything in one go”, there is no indication that this long term tenancy should have to end to accommodate a request simply to make the renovations less expensive or easier for a landlord. While both parties may be inconvenienced during the renovations or repairs, common law, as quoted above, supports that a tenancy does not have to end in those situations.

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.

When considering the good faith requirement I favoured the Tenant’s evidence over the Landlord’s evidence because the Tenant’s evidence was consistent and credible. The

undisputed facts confirmed that the Landlord asked the previous owner to evict the Tenant; that the tenant in the other basement suite pays a higher rent; and there has been talk about renovations that could possibly change the occupancy of the entire complex. Furthermore, I find the Landlord's refusal to explain Sam's position to be presumptuously suspicious.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation of why they need to end this tenancy to be questionable when I consider the totality of the facts before me. Therefore, I accept the Tenant's submission that the Landlord may have an ulterior motive which is driven by a desire to collect higher rent. Therefore, I find the Landlord has provided insufficient evidence to meet the test of good faith.

Upon review of the 2 Month Notice to End Tenancy provided in evidence, I find the Notice was not completed in accordance with the requirements of section 52 of the Act as the Notice was not signed by the Landlord.

Based on the above, I uphold the Tenant's application and cancel the 2 Month Notice to end tenancy issued October 30, 2014.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The undisputed evidence supports that that rental unit is in need of some repairs. The Landlord has recently been served with the Tenant's written request to conduct specific repairs. That being said, I did not hear submissions regarding the necessity of all of the

repairs requested by the Tenant, nor have I seen a copy of the original tenancy agreement to determine what was included in the tenancy; therefore, I decline to make Orders for repairs at this time. That being said, I caution the Landlord that they are required to conduct required repairs in a timely fashion, pursuant with the Act. If the Landlord fails to complete required repairs within a reasonable amount of time then the Tenant would be at liberty to file another application to seek orders and possibly financial compensation.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

As I have upheld the Tenant's application to dispute the Notice, I hereby dismiss the Landlord's application. The Landlord has not succeeded with their application; therefore, I decline to award recovery of their filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

I HEREBY CANCEL the 2 Month Notice to end tenancy issued October 30, 2014 and order this tenancy to continue until such time as it is ended in accordance with the At.

The Tenant may deduct the one time award of **\$50.00** from his next rent payment, as full satisfaction of the recovery of his filing fee, pursuant to section 62 of the Act.

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: January 07, 2015

Residential Tenancy Branch

