Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated November 25, 2014 given alleging that the landlord "has all the 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."

This ground, if established, is a lawful ground to end a tenancy under s. 49 of the *Residential Tenancy Act* (the "*Act*").

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the Notice is justified?

Background and Evidence

The rental unit is a bachelor apartment in a twenty three unit apartment building.

The tenant says the tenancy started in 2007. The landlord's representatives say they have a written agreement showing it started in March 2011. The tenant says he has not signed that agreement. The rent is $900.00 per month. The landlord holds a $425.00 security deposit.

It appears that the landlord attended to the apartment building's tenancy affairs himself until last April, when his son, Mr. B.G. took over. The landlord did not give evidence at this hearing.

The apartment building was constructed in 1958. Mr. B.C., the building manager, testified that "the building was neglected for years and years."

The present work, occurring throughout the building, is repair work and a general modernization of the apartments. A number of units have already been renovated. They were done first because they were vacant, “uninhabitable” according to Mr. B.G.’s written submission, or became vacant.

The renovations in the other suites and the planned work for this rental unit are:

-in the bathroom: new cabinets, counters, sink, waterproof gyproc and tiling the shower stall, perhaps a bathtub, as well as adding ceiling fans for ventilation,
-in the kitchen: new cabinets, countertop, sink and taps, as well as updating appliances and adding a kitchen fan,
-updating plumbing,
-updating light fixtures and out of date electrical systems,
-repairing, sanding and refinishing the wood floor,
-replacing interior doors,
-adding baseboard and crown moulding, and
-painting.

The landlord anticipates five to seven weeks to complete this work, all done by contractors scheduled to start February 2, 2015, the day after the effective date in the Notice.

Mr. B.C. says that none of the work requires a permit.

Ms. S. B.-G. testifies about water leaking from the tenant’s suite into the suite below, now the caretaker suite. She says that in her view the tenant should have known about it and reported it. It was noted that the eviction Notice was not given for “cause” and so tenant conduct is not relevant to the issue of whether or not this Notice, given for renovation and repair.

The landlord has re-rented other renovated bachelor suites in the building at a new rent of $1100.00 per month.

The tenant says he’s contacted the local government, a representative has attend to inspect the building and has told him that a permit or permits would be required for the sub-floor renovations and the pipe work.

The tenant says the landlord has been aware of the condition of the bathroom and the leaking and said last May that he would fix the problems.

The tenant says he's prepared to accommodate any work to be done. He doesn't want to lose this tenancy. He says he would move and stay with friends and store his belongings during the work if need be.

Analysis

Section 49(6)(b) of the *Act* 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:
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> > (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The Residential Tenancy Branch website provides information to landlords and tenants about two month Notices of this type. It notes:

Two Month Notice to End Tenancy

A landlord can serve a tenant with a Two Month Notice to End Tenancy (PDF, 2.2MB) when the:

- Landlord plans, in good faith, to use the property
- Landlord plans to do major construction that requires the unit to be empty
- Tenant lives in a subsidized rental unit and no longer qualifies for subsidized housing

and further

Major Construction

When possible, renovations should be done without evicting the tenant. For example, if the renovations require the unit to be vacant for a short period, the tenant could be relocated and later return to the unit at the same rent.

Major construction means:

- Demolishing the rental unit or doing major renovations that require the building or rental unit to be empty for the work to be done
- Converting the rental unit to a strata property unit, a not-for-profit housing co-operative or a caretaker's unit
- Converting the rental unit for non-residential use, such as a shop. People can occupy the unit, but it must no longer be a rental unit.

The landlord must have all required government permits and approvals in place before issuing the notice for any of the above reasons.

The evidence submitted at this hearing satisfies me that no permits for the work are required.

I find that the landlord has a good faith intention to do the work. He has already completed about seven suite renovations in the building.

I also find that the work proposed is a significant renovation and that it will be necessary that the suite be vacant at times. I do not agree the work will require the unit to be vacant continuously for a period of five to seven weeks though the work may take place over that range of time. Redoing the floors, for example, will render the suited reasonably uninhabitable for the few days that work takes. Similarly, none of the bathroom and kitchen renovations or the painting would require continuous vacancy for weeks at a time.

Though the work "will require the rental unit to be vacant" at times and thus would appear to satisfy section 49 (6) (b), above, the courts have determined that it must also be shown that ending the tenancy is necessary to achieve that vacancy.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257, in circumstances similar the present ones, Mr. Justice Williamson determined:

> [20] The third requirement, namely, that the renovations are to be undertaken in a manner that requires the rental unit to be vacant, has two dimensions to it.
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> [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.
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> [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.

> [23] This interpretation of s. 49(6) is consistent with the instruction in Abrahams and Henricks to resolve ambiguities in drafting in favour of the benefited group, in this case, tenants. 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.

In this case it is perhaps unfortunate that the parties did not make use of the formerly available empty suites in the building and attend to the tenant's suite's renovation and repair earlier. The tenant is prepared to accommodate the renovation work by staying elsewhere and even storing his belongings. I find that the landlord has not shown that it is necessary to end this tenancy in order to obtain the vacant access the renovation work might require.

Conclusion

The tenant's application is allowed. The two month Notice to End Tenancy dated is hereby cancelled. The tenant is entitled to recover the $50.00 filing fee. I authorize him to reduce his next rent due by $50.00 in full satisfaction of the fee.

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 12, 2015

Residential Tenancy Branch