



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
A matter regarding 0792603 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated December 12, 2014 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The individual landlord named in this application, JR ("landlord") and the tenant attended the hearing and were each given an opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the owner and manager of the landlord company named in this application, and that he was representing the landlord company as agent at this hearing (collectively "landlords"). "DV" testified as a witness on behalf of the tenant and "ND" testified as a witness on behalf of the landlord at this hearing. Both parties had an opportunity to ask questions and to cross-examine both witnesses.

The landlord testified that he served the tenant with the 2 Month Notice on December 12, 2014, by posting it to the tenant's rental unit door. The tenant confirmed receipt of the 2 Month Notice on December 11, 2014, stating that the landlord posted the notice on December 11 but dated it for December 12. The tenant confirmed that she had a witness, DV, sign on the back of the 2 Month Notice, stating that he witnessed the tenant receive the notice on December 11, 2014. The tenant provided a copy of this notice with the signature with her application. In accordance with sections 88 and 90 of the *Act*, I find that that the tenant was duly served with the 2 Month Notice on December 11, 2014.

The tenant testified that she served the landlords with the tenant's application for dispute resolution hearing notice on December 18, 2014, and the tenant's two written

evidence packages on December 22 and 24, 2014, by way of registered mail (collectively "Application"). The landlord confirmed receipt of the above documents. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application, as declared by the parties.

The landlord testified that the tenant was served with the landlords' two written evidence packages on January 2 and 5, 2015, by way of registered mail. The tenant confirmed receipt of the landlord's written evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' written evidence packages, as declared by the parties.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant testified that this tenancy began on July 1, 2000 for a fixed term of one year, after which it transitioned to a month to month tenancy. Monthly rent in the current amount of \$1,069.00 is payable on the first day each month. The tenant continues to reside in the rental unit.

A written tenancy agreement was provided with the tenant's application. Both parties testified that this tenancy was under a former landlord when the tenancy agreement was signed. The landlord confirmed that he bought the rental building in June 2014 and that all existing tenancies and monies were transferred over to him, as the new landlord, at that time. The original rental amount under the tenancy agreement was \$715.00. A security deposit of \$355.00 was paid by the tenant on July 1, 2000 to the former landlord. The landlord confirmed that the landlords now retain this security deposit.

The landlords issued the 2 Month Notice, with an effective move-out date of February 28, 2015, for 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 testified that he requires the tenant's rental unit to be vacant in order to demolish and renovate it. The landlord indicated that the rental building has 11 units, is

a 58 year old building, he is performing renovations to all units and re-renting them at fair market value. He stated that these renovations are being done in consultation with his building manager and real estate agent, ND. The landlord's witness, ND, testified that she attends the rental building on a daily basis and has knowledge regarding the repairs being performed by the landlord. She stated that these repairs are being done by each individual unit, and that more renovations are required because of the old age of the building.

The landlords provided copies of 2 Month Notices given to other occupants of the rental building, photographs of other rental units taken before and after renovations, and invoices for renovation work completed for other rental units in the building. The landlord stated that it would take approximately 3 to 4 weeks for these renovations to occur in the tenant's rental unit and that the tenant could return to her rental unit and re-rent it at fair market value after the renovations are complete.

The landlord indicated that he hired a company, "RJHCI," to perform a consultation regarding the tenant's rental unit and that they provided him with a quotation, dated December 10, 2014, for \$15,721.13 to perform this renovation. The landlords provided a copy of this estimate with their written evidence. The estimate indicates that bedroom, kitchen, carpentry, painting, and flooring work need to be completed in the tenant's rental unit. In the bedroom, a wall needs to be removed and a new wall built, new electrical outlets need to be installed, and new gyproc and painting need to be completed. In the kitchen, a section of wall will be removed, new cabinets will replace old cabinets, an eating bar will be installed, and electrical outlets will be installed and relocated. Regarding carpentry, new doors will create a closet, baseboard mouldings will be installed, flooring will be removed, existing flooring will be screwed down, and new linoleum flooring will be installed in the kitchen and dining room. New laminate flooring will be installed in the bedroom, hallway and living room. Painting of all walls and 2 doors are to be done. The estimate indicates that "electrical building and permits as required" but both the landlord and ND testified that no permits are required and if they were, RJHCI would obtain them as needed. The estimate also indicates that if the rental unit was occupied by the tenant during the renovations, the labour and cleaning costs would be double the amount.

The landlord also provided a copy of a letter, dated December 10, 2014, with his written evidence, from "RH" at RJHCI. The letter indicates that the rental unit needs to be vacant during the renovations, as they would take twice as long to complete and the labour cost would be double the amount if the tenant was occupying the rental unit. The letter also states that considerable dust would be present and hazardous products might be used. The letter also indicates that the tenant's belongings are not covered by the

company's insurance if damage were to occur, such that the landlord would have to obtain his own insurance for this purpose.

The landlord indicated that no permits or approvals were required by the City for the plumbing, electrical or other renovation work to be completed in the tenant's rental unit. He stated that if permits were required, that RJHCI would obtain it before starting their work. The landlord's witness ND testified that before all 2 month notices were given to occupants of this building, the City, RJHCI and the Residential Tenancy Branch ("RTB") were all consulted as to whether permits were required. ND indicated that she was told that as long as the landlord's contractors were licensed, no permits were required. ND testified that the landlord's contractors are licensed and therefore, no permits are required. ND stated that anything that did require a permit, would not be completed in the tenant's rental unit.

The landlord indicated that he performed an inspection of the rental building in March and April 2014, before he purchased the building. ND indicated that she attended 3 inspections, in March and April 2014, with the landlord and an engineer where moisture was noticed behind the tiling and that it had been sprayed in the tenant's rental unit bathroom. However, the landlord did not provide any documentary evidence of the inspections, any work required or any problems in the tenant's rental unit.

ND stated that there were a number of problems that the tenant was unaware of, regarding her rental unit. However, the tenant indicated that ND and the landlord have not given her any clear information regarding the problems with her rental unit or the planned renovations for her rental unit. ND indicated that the tenant's floors were damaged beyond normal wear and tear, causing excessive creaking noises and it would have to be replaced. The landlord did not provide any documentary proof of the damage to the flooring. The tenant denied any creaking noises occurring in her rental unit. ND indicated that this creaking was causing a disturbance to the occupant below the tenant's rental unit, who has a new baby, a fact which ND states may be, in part, due to additional sensitivity from this occupant. The landlord indicated that sound-proofing did not have to be done for all units, such as the ones on the bottom floor, but that it had to be done for the tenant's rental unit because of the creaking noises and the occupant being disturbed below. ND indicated that there were unstable support beams that needed to be replaced underneath the tenant's flooring and that the extent of the wood rotting would not be known until it is dug up and examined.

ND testified that a wall was missing between the bedroom and living room, as there was only a temporary wall there now. She indicated that electrical upgrading needed to be done as well as upgrading and changing all pipes in order to prevent leaks to the unit

below. However, the landlord did not provide any documentary evidence regarding leaks or problems with the tenant's existing plumbing, which the tenant says was changed in March and April 2015. The tenant questioned why her unit was the only one with an open kitchen concept. ND claimed that an "open concept" was planned for the tenant's kitchen but that only one other unit had this renovation, while another was in the process.

The landlord stated that he is aware that renovations were done to the tenant's rental unit as of May 2014, but that these were just cosmetic upgrades that were done poorly. The tenant testified that RH is the same individual contractor and RJHCI is the same company that did the prior renovations. The tenant indicated that the landlord is using the same individual and company for his renovations. The landlord testified that his planned upgrades are of a larger scale and that although he was using the same renovation company, they would be using superior quality products, therefore ensuring better standards.

The tenant indicated that the landlords did not issue the 2 Month Notice in good faith. She stated that the landlords are trying to complete only cosmetic renovations in an attempt to increase her rent, in order to make more money. The tenant stated that the landlord has issued 2 month notices to other occupants in the building who must either leave or pay a higher rent, to re-rent their same rental units. Both the landlord and ND testified that all other occupants are having renovations done at different times on a unit by unit basis. Both the landlord and ND testified that all occupants, including the tenant, are welcome to return after renovations are complete and re-rent their rental unit at the market rent price.

The landlord did not provide any photographs of the tenant's rental unit to show the proposed renovations to be done. The tenant provided photographs of her rental unit, indicating that full renovations were done in March and April 2014, prior to this landlord purchasing the building. She stated that in her bathroom, she received a new toilet, a new vinyl floor, new lighting, new large medicine cabinet and mirror, new shower head, new sink and taps, new faucet, new piping and a painted tub. The tenant stated that she advised the former landlord about water damage and tiles falling off in her bathtub and that during the renovations, the old tiles were removed, mold and other contents were scraped and cleaned away, and new shower tiles were installed. The tenant testified that she watched this work being done. The landlord stated that there is now mold behind the tenant's shower tiles, based on renovations that he has done in other units. The landlord did not provide any documentary or other evidence to demonstrate the existence of this mold. ND indicated the walls in the tenant's bathroom were not cleaned of mold as per the tenant's evidence. The tenant provided photographs that

new kitchen cupboards, countertops, sink, faucet, stove, vinyl kitchen flooring, and plumbing were installed, as per the prior renovations. The landlord indicated that he wanted new cabinets of a better quality to replace the tenant's current cabinets. The tenant provided photographs that showed new light fixtures, blinds and painting was done throughout the rental unit.

The tenant indicated that she watched these prior renovations being completed in March and April 2014. The tenant provided emails from RH at RJHCI and the former landlord, confirming these renovations to be done. The tenant indicated that these previous renovations were done while she was away on a trip, that she was allowed to remain in the rental unit while they were being done, that she watched some of the renovations being done after returning from her trip and that her rent was never raised after the renovations were completed.

The tenant provided a copy of a letter from the landlord to all occupants of the building, dated June 3, 2014, when the landlord had just purchased the building. The letter indicates that when the landlord is "able financially" he has "some future plans to do some light renovations that I hope will not be too disruptive to all of you." The landlord states that he hopes to "update the front exterior, landscaping and freshen up the entrance lobby area" and "I also hope that you will let me know if you have any in-suite issues that are in need of immediate repair." The landlord did not provide any responsive evidence to this letter provided by the tenant in her Application.

The tenant's witness, DV, testified that he lived in the same rental building and that the landlord performed cosmetic renovations to his rental unit for a 3 week period in June 2014. DV also provided a signed letter, dated December 21, 2014, with photographs of the rental unit in which he currently resides, after the renovations were completed. These documents were included in the tenant's Application. DV stated that he was given the option to move to another rental unit that had just been renovated or return to his rental unit when renovations were complete. DV opted to move into the other unit where renovations were completed, rather than move back to his old unit.

DV indicated that his rent was raised by \$346.00 per month after the renovations were completed. The landlord indicated that this was a discounted rent for DV. DV also stated that he watched the renovations while they were taking place and that he spoke with RH at RJHCI about the renovations in his unit. DV stated that wood laminate was laid on top of his old floors and that his doors were cut to account for the increased height of these new floors. DV further testified that his kitchen after the renovations is the same as the tenant's kitchen now before the landlord's planned renovations. DV stated that he does not have a new sink as the tenant does now before pre-renovation.

DV stated that the renovations were not to higher standards like the landlord indicates, and that they were done simply to charge him a higher rent, for which he had no choice and paid the higher rent.

DV's written statement indicates that he spoke with other occupants in the building who were affected by the same renovations in their own units and noted similarities between their situations. DV indicated that the landlord did not obtain any permits for the renovations, the new renovations involved no more work than the renovations of the previous landlord, and after the renovations were completed, rental rates were substantially increased.

DV's rental unit photographs, after the renovations were completed, show that his bathroom sink, taps, faucets, showerhead, shower tiles and plumbing were not replaced, even though some repair is required. DV's kitchen sink, taps and faucet were not replaced. DV's old stove with a broken clock and a faulty large burner were not replaced. DV received new "click-in place laminate" that was installed over the wood floor. DV also received new light fixtures, blinds, paint, new kitchen cupboards and countertop, as well as a new toilet, new vinyl floor in the bathroom, a painted bathtub, new lighting and a new small medicine cabinet with no new mirror.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, notices, agreements, invoices and emails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on December 11, 2014 and filed her Application on December 18, 2014. Therefore, she is within the 15 day time limit under the *Act*. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the basis of the 2 Month Notice.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

I find that the landlord has issued the 2 Month Notice for different reasons. The landlord has indicated that he intends to demolish and renovate the tenant's rental unit. However, his planned upgrades are very similar to the prior renovations made to the tenant's rental unit, just months before. A witness, DV, testified to the similarity between his and the tenants rental unit, after his renovations were completed. In fact, he indicated that the tenant has newer kitchen amenities pre-renovation, as compared to his renovated kitchen. The landlord is using the same contracting company that performed the prior renovations to the tenant's rental unit, after indicating that they did a poor quality job. The landlord says that the new renovations are of superior quality because he is using superior products and giving better instruction to the contracting company. However, both the tenant and DV spoke with the landlord's contractor, who indicated that he installed new flooring over top of old flooring, and DV watched this occur in his own rental unit. Both the landlord and ND testified that they had increased the rent to market rates for all renovated units and they planned to do the same with the tenant's rental unit.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the tenant has provided sufficient evidence to demonstrate her claim that the landlords issued the 2 Month Notice in order to raise her rent by a substantial amount, which is not a valid reason to issue the notice. The tenant provided a written statement from “TT,” dated December 21, 2014, another occupant of the rental building, which indicated that TT's unit would be renovated in the future and the landlord advised her that “he was kicking everyone out one by one, because he was running a business.” The landlord's witness, ND, referred to TT's statement and

confirmed that the landlord was running a business and was entitled to rent his units at fair market value, for which the tenant's rental unit was currently below this amount. The landlord confirmed that he was currently renting the tenant's unit at below market value, that he intended to rent it at a higher rate after the renovations, and that all his renovated units were being rented at higher rates in line with fair market value. DV testified that his rent was raised substantially after only cosmetic renovations were done. The tenant provided evidence, which the landlord confirmed, that DV was charged \$346.00 extra per month, and that another occupant was paying an additional \$326.00 more per month. The landlord and ND confirmed that the tenant would be charged \$531.00 to \$581.00 more per month in rent, as her current rent is \$1,069.00 and her new rent is proposed to be between \$1,600.00 to \$1,650.00 after the renovations are completed. ND proposed during the hearing that the landlord consider a lower rental amount for the tenant, if he was able.

I find that the tenant's rental unit already had substantial renovations completed by the former landlord. The tenant occupied her rental unit and continued paying the same rent, during these previous renovations. The landlord did not submit any photographs, reports or other documentary evidence to show issues with mold, damage, and other problems, that he says are present in the tenant's rental unit. The landlord did not submit any inspection reports regarding the tenant's rental unit, even though ND confirmed that she performed 3 inspections with the landlord and an engineer present. The landlord could not recall the tenant's specific rental unit when he performed these inspections. The landlord had very little knowledge of the tenant's rental unit, the renovations that had already been done, and the renovations that he personally planned for the rental unit. The landlord relied heavily on his witness, ND, who is not a structural engineer or a plumber.

By contrast, the tenant provided sufficient evidence to demonstrate that prior renovations were already completed in her rental unit and that the landlord was intending to complete similar work now. DV confirmed that the tenant's pre-renovation kitchen sink and cabinets were the same as his newly renovated unit. The tenant stated that she spoke with RH from RJHCI, who indicated that he wished the landlord would complete better renovations rather than laying old flooring over top of other flooring. The landlord denied the flooring method raised by the tenant and stated that RH is not permitted to speak with any tenants, as he deals only directly with the landlord. The tenant indicated that these renovations were being done in order to find new tenants as soon as possible and re-rent the units at higher rates.

I find that the landlords have not met their burden of proof to show that they have all the necessary permits and approvals required by law to renovate the tenant's rental unit.

The tenant provided evidence that she spoke with the City and they advised her that any structural work, including removing walls, and any electrical work, including moving any electrical outlets, required permits. The landlord and ND both testified that removing and building walls, as well as electrical work would be performed in the tenant's rental unit. The tenant spoke with the City on December 19, 2014 and was told that they did not have any registered building, electrical or plumbing permits for her rental unit, from the landlord. The landlord admitted that he did not obtain any permits for the tenant's rental unit renovations. The landlord indicated that RJHCI would obtain the necessary permits if required, later. However, at the time of issuing the 2 Month Notice, it states clearly on the notice that the landlord must have any required permits already in place. ND indicated that she spoke with the RTB about the required permits; yet, it is the City and related authorities that would determine whether permits are required, not the RTB. ND testified that no work requiring permits would be done in the tenant's rental unit, which calls into question the extent of the intended renovations to be completed.

I also find that if the tenant is willing to temporarily leave her rental unit for the duration of the renovations, that an end to the tenancy is not required. Both parties testified that the renovations will only take a short time, from approximately 2 to 4 weeks. The tenant stated that she can obtain temporary accommodation at her sister's unit across the hall from her current rental unit, during the renovations. The landlord's RJHCI estimate also states that the tenant can remain in the rental unit, but that the labour and cleaning costs would be double the amount and would take longer.

In the Supreme Court of B.C. case of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the Court held that the fact that renovations might be more easily or economically undertaken if the unit were empty, is not sufficient to demonstrate that the unit must be empty for renovations to take place. Firstly, in order to warrant an end to tenancy, renovations must only be possible if the unit is unfurnished and uninhabited. Secondly, the landlord must establish that the only manner to achieve this vacancy or emptiness is by terminating the tenancy. In the above case, the court held that it was irrational to think that a landlord could terminate a tenancy because a brief period of emptiness was required, which in that case was 3 days. The tenants in that case were also willing to vacate the suite temporarily and remove their belongings if necessary.

Firstly, in this case, the landlord and his contractor performing the renovations (RH from RJHCI) both indicated that the rental unit did not need to be empty during renovations. They both stated that the labour and cleaning costs would be double if the tenant was occupying the rental unit; as noted in the above case, this is not a sufficient reason to

demonstrate that the unit must be empty. Secondly, an end to this tenancy is not required where this tenant is willing to temporarily vacate the rental unit, in which case she can also remove her belongings. The renovation period of two to four weeks is a brief period of emptiness. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, a requirement of section 49(6)(b) of the *Act*.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, have all the necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlords' 2 Month Notice, dated December 12, 2014, is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. This tenancy continues under the terms of the original tenancy agreement, at the current monthly rent of \$1,069.00, until this rent is legally changed in accordance with the *Act*.

As the tenant was successful in her Application, she is entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated December 12, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant is entitled to recover the \$50.00 filing fee from the landlord. I order the tenant to deduct \$50.00 from a future rent payment at the rental unit, in order to implement this decision.

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 30, 2015

Residential Tenancy Branch

