



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEATHERLEA APARTMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FF

APPLICATION:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End tenancy dated March 22, 2015 to be effective May 31, 2015. The Notice to End Tenancy is issued under section 49 of the *Residential Tenancy Act* (the Act) and the tenant states that it was not issued in good faith and the Notice was not served correctly.

SERVICE:

I accept that the tenant was served with the Notice to End Tenancy under his door; he agreed he received it and the landlord agreed he received the Application for Dispute Resolution by registered mail. On the issue of service raised by the tenant, I find the Notice to End Tenancy was served legally according to section 88 of the Act.

ISSUES:

Is the landlord acting in good faith? Has the Notice to end Tenancy been served legally? The main issue is whether the rental unit needs to be vacant in order for the landlord to do renovations.

THE HEARING:

The landlord stated the reason for ending the tenancy on the Notice is 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 tenant alleges the landlord is not acting in good faith for the units do not need renovation but only cosmetic touches and the main reason the landlord is renovating is to raise rents.

An issue in dispute is whether the rental unit needs to be vacant in order for the landlord to do those renovations and both the landlord and the tenant had contractors to testify as specialists on this point and on whether the units need extensive renovation or cosmetic upgrading.

The tenant said the building is well maintained and had all the plumbing and windows done with the tenants in place several years ago. He said the paint is lifting a bit around the windows but that is not water ingress, just multiple layers of paint. He said his main issue is with the scope of work proposed; he thinks this scope is only proposed so the

timeline for doing it will be extended so the landlord can claim the tenants will have to vacate. He said he is willing to move out for a few days if necessary but not for several months.

The landlord said he has offered to re-rent when the renovation is completed or to rent to the tenant one of the renovated units across the hall. The tenant said there would be 100% increase in rent for renovated units. The landlord agreed that the building is not economically viable at the moment as there is a low return on such an expensive investment in this desirable area in the West End. However, he maintains that the building is over 50 years old and in need of extensive renovation and he is investing in it with the long term goal of the good of the building. He said that some windows are leaking water into the walls, there is insufficient insulation, the plumbing is inadequate or not suitable for appliances such as dishwashers and in-suite laundry and the electric wiring is very old. The renovation he contemplates is taking the unit down to the studs and rebuilding it at a cost of about \$75,000. He has already done two units on this floor while they were vacant; photographs are in evidence.

The tenant's witness said he was a project manager and site superintendent for many years. He said he does not believe that this major construction needs to be done in this old building. He said the windows could just be caulked every few years, insulation could be blown in from outside so no walls would have to be removed, the plumbing could be done with cutting and patching so no one would have to move and there is no sign of mice in the building or an electrical problem. He said the tenant's suite looks great and a dishwasher could be installed with no need of re-plumbing. He said the scope of work is exaggerated and unnecessary.

The witness for the landlord stated that he is a structural and civil engineer and has been in the construction industry for many years. He described how they renovated two other units on the same floor as the tenant's unit. He said that appearances are deceptive so it is easy to be misled by a unit's initial appearance but the building is not in good shape. He said the current windows can't be re-caulked for they were installed incorrectly and the flashing and sills direct the water into the walls. This may not show on this tenant's unit for he is on the top floor and the water runs down but it is running into the building and causing some of the wooden structure to rot. He said they have to take down the walls and the old lathe and plaster will cause a lot of dust and hazardous conditions; the work persons have to wear hardhats and proper gear according to WCB standards. He said the building needs to be torn apart to bring it up to current code. They explored the idea of blowing in insulation from the outside with two contractors but there are so many obstructions and strange designs of the wood floors and walls in the building that blown in insulation would only be 50-60% effective. There is lots of copper plumbing pipe which has problems such pin hole leaks, the bathrooms have tiles on two inches of concrete which have to be removed to get at the plumbing, electric wires are chewed and need replacing and the ceilings have to be removed to put in fans in the bathrooms and kitchens. He said so many elements have to be replaced that it will take several months; for example, there will be no bathroom for at least 4 weeks and no kitchen for even longer because of the extensive duct work. He estimates the unit has

to be vacant for at least 3 months provided no other issues are found but he said that the other units which they just renovated in the same building had multiple issues that were discovered as the walls were removed, for example, plumbing was in the outside walls with no insulation and some wood rot was found. He said it is ridiculous to suggest cutting and patching drywall onto lathe and plaster to do the job piecemeal. He provided a detailed plan and report on the extensive work required. In answer to the landlord's contractor, he said the schedule is not exaggerated, it is real. The work cannot be done piecemeal, trades work to a schedule or they are not available.

The tenant said there was a vacant suite in the building which he could occupy for a month but the landlord said it is sublet until September so not available.

On the issue of good faith, the landlord emphasized that they are not targeting this tenant. He has been an excellent tenant for many years but the top floor needs to be done first and they have completed two other units on that floor. He said they are not doing the renovation just to raise rent; if so, he contended they would do the minimal but, in fact, it is a major renovation costing about \$75,000 per suite.

Analysis:

Both parties submitted some evidence late; I considered the evidence in my decision as both parties were at fault in late submissions and the evidence was important to understanding the technical issues in the matter.

Section 49(6) of the Act states that a landlord may end the tenancy if he has all the permits and approvals required by law and intends in good faith to (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I find the main issue in this case is whether the landlord in good faith intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Apparently the landlord has an electrical permit and it was not alleged that he needed further permits. Two cases relevant to the point are *Berry v. BC* [2007] B.C.J. No 368, 2007 BCSC 257, and *Allman v. Amacon Property Management Services Inc.*[2006] B.C.J. No. 1022, 2006 BCSC 725 (which said that cost effectiveness should not be one of the criteria when deciding to do end the tenancies in the whole building vs. doing it unit by unit).

The tenant raised the issue of good faith and said the landlord is just using this to evict tenants and raise rents. Residential Policy Guideline 3 defines good faith as an abstract quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. It notes the landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy and this might be documented by such items as a Notice to End Tenancy at other rental units, a government document permitting change (e.g. a building permit) and a contract for the work. I find the weight of the evidence is that the landlord is not acting in bad faith in ending this tenancy. I find he honestly intends to do a substantial renovation as evidenced by the work description and contract and the fact that he has done two other units already in like manner. For the same reasons, I find no evidence that the tenant is being targeted.

The issue remains whether or not the manner of the renovation of the rental unit requires the rental unit to be vacant. Although the contractors spent some time contending about whether or not the renovation could be done piecemeal and whether or not insulation could be blown into walls from the outside, I find as fact the landlord has decided on the manner of the renovation after consulting and engaging experienced contractors. Based on the evidence, I find as fact that the landlord is doing a substantial renovation to the subject unit and proceeding to do further substantial renovations to other units. I find the evidence of the landlord's contractor more credible and prefer it to the evidence of the tenant's witness contractor as the landlord's contractor has already done two units in this building and discovered many problems that are currently hidden inside walls and pleasant appearing floors.

I find as fact that the lathe and plaster walls need to be opened, exposing persons present to filth, dust, holes, exposed electrical wiring and posing serious risks without the proper safety equipment. The contractor states and I find it credible that Workers Compensation would not allow a tenant to be in the space while this amount of work is done. I find as fact that the total time as provided in evidence, provided nothing unexpected occurred, would be at least 3 months with many different trades involved so there would be no lighting, no power, and no cooking or hot and cold water available for extended periods. For example, the contractor estimates 4 1/2 weeks without water, toilet or washing facilities, 6 weeks for kitchen work and 8 weeks for living area. Photographs are provided of the other renovations in the neighbour suites showing them taken down to the studs.

Judge Williamson pointed out in *Berry*, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place". In that case, the arbitrator had found that the unit only had to be empty for three days and that the tenants were willing to vacate for the three days.

In this case, I find as a practical matter that the tenant's unit has to be vacant for at least three months in order for the renovations on it to proceed. I find that the tenant's offer to relocate to another unit while his unit is being renovated is not viable; he is not willing to pay the higher rent in a neighbour unit and the landlord said there are no other units vacant in the building. In this case, I find as fact that the extensive renovations are only possible if the unit is unfurnished and uninhabited.

I also distinguish this case from the *Amacon* case. In the *Amacon* case, the arbitrator found as fact that it was possible to renovate the suites while occupied. However, I find on the evidence in this case that it is not possible to renovate the subject suite while it is occupied because of the nature and extent of the intended renovation. I do not find that cost is a significant criterion of the landlord as he is doing the units one by one rather than vacating the whole building which might be more cost effective as contended in *Amacon*.

I do not find the evidence of the tenant and the tenant's contractor to be persuasive as they discussed minor superficial changes to the tenant's unit which is not the manner in which the landlord intends to renovate and would not accommodate the extensive work required for plumbing and electric wiring to bring them up to Code. While they discussed alternative methods such as blowing in insulation, I find the landlord's evidence credible that this is not practical or possible for a complete effective insulation job which is needed to address the plumbing in the outer walls.

Conclusion:

I find on the facts that the landlord is acting in good faith and the manner of their intended renovation requires the subject unit to be vacant. I dismiss the tenant's application to set aside the notice and the tenant's request to recover the \$50.00 filing fee paid for this application.

As the tenant is unsuccessful, I grant the landlord's request for an Order of Possession pursuant to section 55 of the Act. The effective date on the Notice to End Tenancy was May 31, 2015 and an Order of Possession is issued effective May 31, 2015.

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: May 13, 2015

Residential Tenancy Branch

