



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vriezen Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, RP, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and an order compelling the landlord to perform repairs. Both parties participated in the conference call hearing with both tenants being represented by the tenant MG. In this decision where I refer to the tenants in the singular form, it is MG to whom I refer as he is the party who gave testimony during the hearing.

Much of the time allotted for the hearing was taken up by discussions in which the parties engaged in an attempt to settle the issue of the tenancy. As a result, the tenant did not have opportunity to present his claim for an order compelling the landlord to perform repairs and the landlord did not have opportunity to respond. As this claim was overlooked and the parties did not have full opportunity to address the issue, I dismiss the claim with leave to reapply.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on April 2, 2015, the landlord served the tenants with a 2 month notice to end tenancy for landlord's use of the rental property (the "Notice"). The Notice states that the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord stated that at the time the Notice was served, the strata council had given them verbal assurance that their approval, which is required to perform the intended renovations, was forthcoming. The landlord stated that they intend to completely renovate the unit, including flooring, drywall, fixtures and possibly cabinetry.

The tenant stated that he would be willing to move out of the unit temporarily or otherwise accommodate the landlord to allow the landlord to perform the renovations while he was still in the unit. The landlord stated that it would not be cost effective to renovate the unit while the tenant was still in residence.

Analysis

The landlord bears the burden of proving that they have grounds to end the tenancy. In order to meet this burden, the landlord must prove that they had all approvals in place before giving the tenant the Notice. In their written submissions, the landlord acknowledged that at the time the Notice was served, the strata council had given them assurance that the council would approve their plan to renovate, but had not yet formalized that approval. I find that because the landlord cannot proceed with renovations without the strata council's approval and because that approval had not yet been formalized at the time the Notice was served, the landlord was not in a position to serve the tenants with the Notice. For that reason, I find that the landlord has not met their burden of proof and I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

I note that even if the landlord had all approvals in place, I would not have upheld the Notice. In the BC Supreme Court *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Mr. Justice Williamson found that if a tenant was willing to vacate the unit to permit renovations to be done, there was no need to end the tenancy. Because the tenants are willing to work cooperatively with the landlord to permit renovations to take place, I find that the tenancy should not be terminated.

As the tenants have been successful in their application, I find they should recover the \$50.00 filing fee paid to bring their claim and I award them that sum. The tenants may deduct \$50.00 from a future rental payment.

Conclusion

The Notice is set aside and the tenants may recover their filing fee by deducting \$50.00 from a future rental payment.

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: June 1, 2015

Residential Tenancy Branch

