



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 27, 2015 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's two agents, landlord NH ("landlord") and "landlord CL," and the two tenants, tenant BI ("tenant") and "tenant RC," attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both the landlord and landlord CL confirmed that they are property managers for the landlord company named in this application and that they had authority to represent it as an agent at this hearing.

The landlord testified that he received a copy of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenants' Application.

The landlord confirmed that 19 photographs were sent to the tenant by way of registered mail on October 22, 2015. The landlord stated that as per their Canada Post tracking number confirmation, the tenants signed for the package on October 28, 2015. The tenants confirmed receipt of nineteen photographs from the landlord two days prior to this hearing on November 2, 2015. In accordance with sections 88 and 90 of the Act, I find that the tenants were duly served with the landlord's photographs.

I had not received a copy of the landlord's photographs prior to this hearing. I allowed the landlord to submit these photographs to the Residential Tenancy Branch ("RTB")

after the hearing, as the tenants had received and reviewed the photographs and the landlord wanted me to consider them in my decision. I received a copy of the landlord's photographs after the hearing. Although this evidence was served late, as it was received by the tenants less than 7 days prior to this hearing not including the hearing date, contrary to Rule 3.15 of the RTB *Rules of Procedure*, I considered the photographs in my decision as the tenants had an opportunity to review and respond to the photographs at this hearing. However, I found the photographs to be unhelpful to the landlord's case, as noted in the Analysis section below.

The tenants confirmed receipt of the landlord's 2 Month Notice on August 27, 2015, which the landlord said was posted to the tenants' rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that that the tenants were duly served with the landlord's 2 Month Notice on August 27, 2015.

The landlord consented to the tenants' request to amend their Application to correct the landlord company's name. In accordance with section 64(3)(c) of the *Act*, I amend the tenants' Application and the change is now correctly reflected in the style of cause on the front page of this decision.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed that this tenancy began on November 15, 2008. Monthly rent in the current amount of \$1,600.00 is payable on the first day each month. The tenant confirmed that a security deposit of \$1,400.00 was paid to the landlord but he was unsure of this amount, while the landlord stated that the deposit was \$700.00. The tenants continue to reside in the rental unit. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing.

The landlord issued the 2 Month Notice, with an effective move-out date of October 31, 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 confirmed that no structural alterations would be made in the unit. He stated that the owner of the building asked the landlord company to issue the 2 Month Notice to the tenants in order to complete renovations to the roof and the rental unit. The landlord noted that the roof is an envelope surrounding the tenants' freestanding penthouse. He also indicated that there were concerns regarding rewiring and plumbing in the rental unit, and water leakage through the roof structure of the building. The landlord indicated that no permit was required to install a membrane over the roof. He explained that renovations would also be completed inside the unit including removing the kitchen cabinets, sink and countertops, as well as the bathroom sink and bathtub. The landlord indicated that no permits or approvals were required by the City at this time and if permits were required at a later date, he would deal with it then. The landlord noted that the tenants must vacate the rental unit because the plaster from the walls would be removed to install drywall, the windows and patio doors were old and would have to be replaced due to energy and efficiency concerns, and the roof repair would be extensive.

The tenants testified that the landlord did not issue the 2 Month Notice in good faith. They explained that renovations were already completed when they first moved into the unit in November 2008. They stated that the landlord was completing renovations in an attempt to increase their rent, in order to make more money. They stated that the rental building was old, the landlord's maintenance of the building was not sufficient, and that whenever repairs were requested by them, they were usually not performed by the landlord at all or if they were, it was untimely. The landlord disputed the tenants' claims, indicating that repairs are performed, and he has done them personally at times.

Analysis

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after they receive the notice. The tenants received the 2 Month Notice on August 27, 2015 and filed their

Application on September 2, 2015. Therefore, they are within the 15 day time limit under the *Act*. The onus, therefore, shifts to the landlord 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 not met the burden of proof to show that all the necessary permits and approvals required by law were obtained to renovate the tenant's rental unit. The landlord acknowledged that no permits or approvals were obtained for these renovations because none were required. The landlord stated that they may be required later and he would obtain them at that time. The landlord maintained that when the walls are exposed, before completing drywall installation, the City would send out an inspector to determine if a permit was required. However, at the time of issuing the 2 Month Notice, it states clearly on the notice that the landlord must have any required permits and approvals already in place. The landlord did not submit any documentary evidence from the City to show that no permits or approvals were required for the type of work to be done. The landlord indicated that permits are only required for fixtures and rewiring. However, the landlord also testified that there were concerns regarding rewiring in the tenant's rental unit. Tenant RC stated that he spoke with the City, who advised him that if renovations were being done that did not require a permit, the tenants were not required to leave their rental unit.

I find that the landlord has not met the burden of proof to show the 2 Month Notice was issued in good faith. I find that the landlord is attempting to raise the tenants' rent by a substantial amount, which is not a valid reason to issue the notice. The tenants indicated that rent increases are common in their area and that the landlord is limited by the rent increase rules in the *Residential Tenancy Regulation* if they want to raise the rent with the tenants still residing in the unit. The landlord raised the rent by \$100.00 from the original tenancy agreement amount of \$1,400.00 to \$1,500.00 by having the tenants sign a new agreement at the end of their one year fixed term. The landlord continued to increase the rent in 2012 and 2013 to the current amount of \$1,600.00. The landlord testified that the tenants could leave the rental unit temporarily and come back after the renovations are complete, sign a new tenancy agreement and pay rent of approximately \$2,000.00 per month. The landlord stated that with all the renovations costs expended, the tenants would not be able to return to the unit and pay the same amount of rent of \$1,600.00. This is a proposed rent increase of \$400.00 per month. The landlord indicated that the renovations are an attempt to preserve an asset, not to make money, but given that so much would be spent on the renovations, a higher amount of rent was required from the tenants. I do not accept this argument because the landlord would have completed repairs and renovations during this tenancy when issues arose and the landlord is ultimately asking the tenants to pay more rent money.

I find that the tenants' rental unit already had a number of renovations completed when they first moved in. Both tenants confirmed that when they moved into the rental unit in 2008, it was fully renovated. Tenant RC confirmed that the unit was painted upon moving in. The tenant indicated that there were new hardwood floors, a new toilet, a new bathtub and new doors. The landlord testified that the bathroom would be renovated including replacing the bathtub and sink. The tenant stated that only the kitchen cupboards were old and the kitchen countertop was "old fashioned." He stated that there is no water damage, electrical or plumbing issues in the rental unit. By contrast, the tenant indicated that there are dirty hallways in the rental building, burned light fixtures in the rental unit and a new security door is required. Tenant RC stated that the renovations proposed by the landlord could have been done over the lengthy period of time that the tenants have been living in the unit, since 2008, particularly as they have been requesting a new patio door since they moved in. Tenant RC noted that the wood on the roof was rotting but the landlord only replaced it at the tenants' request. The landlord did not submit any photographs, reports or other documentary evidence to show the proposed renovations to be done or any issues with wiring, plumbing and water leaks. The photographs submitted by the landlord are of debris which the landlord asked the tenants to remove. I find that these photographs are unhelpful to support the landlord's claim.

I also find that if the tenants are willing to temporarily leave their rental unit for the duration of the renovations, that an end to the tenancy is not required. The landlord testified that the renovations will only take a short time of approximately 2.5 months to about 4 months. The landlord did not provide any documentary evidence of the estimated time period for these renovations. Both tenants confirmed that they were willing to leave the rental unit temporarily and return. The tenant confirmed that he travels most of the time and has accommodation in another country where both tenants can stay. Tenant RC stated that he can find local accommodation temporarily.

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.

In this case, I find that an end to this tenancy is not required where the tenants are willing to temporarily vacate the rental unit. The renovation period, estimated by the landlord, was 2.5 to 4 months, which I find to be a brief period of emptiness. The actual estimate from experts conducting the renovations might be lower, but the landlord did not supply any documentary evidence regarding this. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, which is 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 landlord has not met the onus of proof to show that the landlord, in good faith, has 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 tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 27, 2015, is hereby cancelled and of no force or effect. The landlord's request for an order of possession is denied. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlord's 2 Month Notice, dated August 27, 2015, is cancelled and of no force or effect. The landlord's request for an order of possession is denied. This tenancy continues until it is ended in accordance with the *Act*.

The tenants are entitled to recover the \$50.00 filing fee from the landlord. I order the tenants to deduct \$50.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award.

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: November 06, 2015

Residential Tenancy Branch

