



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that this tenancy has been approximately 15 years in duration and that the rental unit is one of several in the building owned by the landlord. They further agreed that on August 18, the landlord served on the tenant a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The Notice states that the landlord intends to renovate the unit in a manner which requires it to be vacant.

The landlord testified that she intends to perform the following work:

- Replace the kitchen linoleum and subfloor;
- Sand and re-paint all doors, cabinet doors and baseboard trim;
- Replace the kitchen countertop;
- Repaint the ceilings and walls;
- Replace the toilet, sink and vanity in the bathroom;
- Install a new medicine cabinet in the bathroom;
- Install new fans in the kitchen and bathroom;
- Resurface the hardwood floors in the kitchen and bathroom;

The landlord entered into evidence a statement from her insurance company in which the company stated as follows:

[The insurance company] do require the Suite being renovated to be unoccupied while the renovations are taking place due to the possibility of 3rd party (i.e. tenant) injury while the work is underway.

The landlord stated that she and her husband intend to perform the required labour themselves and at a leisurely pace, which they expect to take up to 4 months.

The tenant argued that the rental unit does not require repair and questioned whether the landlord was acting in good faith, alleging that she wanted to renovate the rental unit to attract higher rents. The landlord stated that in her opinion, the unit required updating and that she was entitled to protect her investment property.

The tenant presented as evidence a letter from another occupant of the building in which she stated that she was able to continue to reside in her unit while the hardwood floors were being resurfaced. The landlord responded to this by saying that the refinishing of the hardwood floors was the only renovation undertaken in that unit and that prior to undertaking that renovation, she had failed to ask her insurance company whether completing the work with the occupant in residence would impact her insurance coverage.

I asked the tenant whether he would be willing to vacate the rental unit for a period of time to permit the landlord to perform repairs and he stated that he would be away from the rental unit for one month during the winter and one month during the summer and would expect the repairs to be completed during those months. He stated that he would be willing to move his belongings out of the landlord's way while she performed work in the unit.

Analysis

Section 49(6)(b) of the Act provides as follows:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

First addressing the tenant's argument that the landlord is acting in bad faith and his allegation that the landlord wants to renovate the unit to attract higher rents, Residential Tenancy Policy Guideline #2 discusses the good faith requirement of section 49.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. ...

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 they do not have an ulterior motive for ending the tenancy.

The landlord testified that this rental property is providing her retirement income and that she wishes to maximize and protect her investment by performing renovations while she is still able to do so herself. The landlord may have an ulterior motive to at some point obtain higher rents, but I am not persuaded that this motive can be characterized as malicious or dishonest. I can detect in the landlord no animosity toward the tenant or desire to end his tenancy for any other reason than to gain unfettered access to the rental unit to perform the same renovations that she has already performed in other units. It is very common for landlords to ensure that all units in a building meet a similar standard and the landlord's desire to upgrade and modernize the unit in the same way that she has done with other units is in my view neither dishonest nor malicious.

Both parties are well aware that the tenancy does not need to end in order for the landlord to receive higher rents as it is always open to the landlord to apply to the Residential Tenancy Branch for an order permitting her to increase the rent beyond what is currently permitted by the Regulations. If the tenant were successful in having the Notice set aside, the landlord could simply conduct the renovations and make such an application to achieve her goal if this is indeed her goal. Whether or not the landlord wishes to increase her rental revenue, I am not persuaded that this desire can be

characterized as a dishonest motive. I find that the landlord truly intends to renovate the unit and that any ulterior motive is not dishonest or malicious and therefore I find that the landlord is acting in good faith.

The tenant argued that the renovations were not required. Had the landlord purported to end the tenancy to repair the unit, it would have been appropriate to consider whether repairs were necessary. However, that is not the case with renovations. There is nothing under the Act which states that landlords may only renovate when renovations are required. As the owner of the property, the landlord is entitled to perform whatever renovations she wishes to perform in order.

The landlord presented evidence that her insurance will not be effective if she performs the renovations while the unit is occupied. While there are some elements of the renovations which could be performed while the tenant is still in residence, because it would jeopardize the landlord's insurance coverage if the unit remained occupied, I find that it would be unreasonable to continue the tenancy as this would prevent the landlord from performing those renovations.

In 2007, the BC Supreme Court heard a judicial review of a Residential Tenancy Branch decision in which this same type of notice was at issue. In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the court determined that when tenants who are served with this type of a notice offer to completely vacate the rental unit for the entire period during which renovations are underway, the tenancy must be preserved. In this case, the tenant offered to absent himself in December and again in the summer and indicated that he would move his belongings "out of the way," but was not willing to completely vacate the property. I therefore cannot preserve the tenancy on the basis of the tenant's willingness to vacate the property.

I find that the rental unit must be vacant in order to complete the renovations and for that reason, I decline to set aside the Notice and I dismiss the tenant's claim.

At the hearing, the landlord asked that the tenancy be ended on December 1 while the tenant asked that he be granted another 2 months to secure alternate housing. Section 68(2)(a) allows me to exercise discretion in setting an end of tenancy date and I find it appropriate to do so in this case.

This tenancy has lasted for approximately 15 years and I anticipate that it will take the tenant some time to sort through and pack his belongings. He had a reasonable prospect of success in this hearing and did not anticipate that he would be unsuccessful and therefore has not taken steps to move up until now. Because the landlord is doing the work herself, I find it likely that she has some flexibility in her work schedule, particularly as she is intending to undertake the work in a leisurely fashion. For these

reasons, I find it appropriate to order that the tenancy end on January 31, 2016. The tenant will not be required to pay rent in the month of January as he is entitled to compensation equivalent to one month of rent.

Conclusion

The tenant's claim is dismissed and the tenancy will end on January 31, 2016.

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 10, 2015

Residential Tenancy Branch