



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant and the named landlord called in and participated in the hearing. The tenant submitted documentary evidence in support of his application on December 1, 2015. The landlord submitted documents and photographs to the Residential Tenancy Branch on December 24, 2015. He tenant acknowledged receiving the landlord's evidence on December 20, 2015. The tenant said that he was prepared to respond to the landlord's evidence and on that basis, I have admitted the landlord's evidence although it was submitted late.

Issue(s) to be Decided

Should the Notice to End Tenancy for landlord's use dated October 26, 2015 be cancelled?

Background and Evidence

The rental unit is one half of a duplex residence in Richmond. The tenancy began in 1997. There have been previous dispute resolution proceedings regarding this tenancy. In a decision dated February 3, 2015 the tenant was granted a monetary award in the amount of \$24,760.00, being the amount found to be rent overpayments resulting from the landlord's illegal rent increases during the tenancy.

A September 3, 2015 decision dealt with the landlord's application for an additional rent increase. In that decision the arbitrator dismissed the landlord's application for an additional rent increase.

On October 26, 2015 the landlord served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice to End Tenancy requires the tenant to move out of the rental unit by December 31, 2015. The stated reason for the Notice to End Tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord.

The landlord said that he served the Notice to End Tenancy by leaving a copy in the tenant's mailbox at the rental unit. The landlord testified that his mother, J.L. is the owner of the rental property. He said that she is 74 and in poor health. She is partially paralyzed and mostly confined to a wheel chair. She has arthritis in her upper extremities. The landlord provided a report from an occupational therapist who recommended that the landlord's mother should live in a wheel chair accessible environment. The occupational therapist was asked to assess the rental unit to determine what modifications would be required to make it suitable for occupation by the landlord's mother. She provided a list of more than 20 modifications that would be required before the rental unit would be suitable for occupation by the landlord's mother. The report referred to the duplex unit adjacent to the rental unit, but the landlord testified that the reference to the adjacent unit was a typographical error. The landlord's mother did not attend the hearing and did not provide any direct evidence concerning her intention to live in the rental unit, although she is the owner of the property. The landlord said that attending the hearing was too stressful for his mother because of her poor health.

The landlord submitted a quotation from a contractor for work said to be required to make the rental unit suitable for occupancy by the mother. The quotation included work that amounted to a complete renovation of the rental unit, including demolition of the interior, re-plumbing, replacement of the furnace and hot water tank, electrical work, re-framing work, construction of a wheel chair accessible bathroom , new drywall and flooring throughout and a full kitchen renovation.

The tenant testified that he was not served with the Notice to End Tenancy as stated by the landlord. He testified that the landlord delivered the Notice to End Tenancy to him personally and told him that if the tenant did not agree to a monthly rent of \$2,000.00 the landlord would take all necessary actions to evict him. The tenant disputed the landlord's good faith in giving the Notice to End Tenancy. The tenant submitted that the rental unit was not suitable for the landlord's mother; he submitted that based on the medical information provided by the landlord, the rental unit was unsuitable for her to live in, when she actually needed to move to an assisted living facility suited to someone with her degree of disability.

The landlord said that he has searched for a suitable rental unit for his mother, but he has not located a rental unit that is equipped to accommodate her disability. He said that his mother does not want to be housed in a care home and the rental unit, once it is modified will allow her to live independently. It is close to bus service, which is important because his mother is no longer able to drive.

The landlord said that it was important to end the tenancy now so his mother can have access to the rental unit for the purpose of planning the proposed renovations to the unit.

Analysis

The owner of the rental property did not attend the hearing and did not provide any evidence in the form of a written statement to confirm her intentions to live in the rental unit. According to the landlord she is currently living with him in his residence. Based on the evidence provided, I find that the landlord has not established on a balance of probabilities that the landlord's mother intends in good faith to live in the rental unit.

The landlord testified that the rental unit requires a complete renovation and extensive modifications in order to make it suitable for occupancy by his mother. She will be unable to occupy the rental unit until the work has been completed. There is no dispute that the proposed renovations will require that the rental unit is vacant before the work can commence. The proposed work involves extensive plumbing and electrical work and structural modifications to the rental unit. The renovations will, in all likelihood require that permits and approvals be obtained from the City of Richmond.

I find that the landlord has given Notice to End Tenancy based on improper grounds and that the Notice to End Tenancy for landlord's use dated October 26, 2015 should therefore be cancelled. I make no finding with respect to whether or not the landlord's mother and owner of the property intends in good faith to live in the rental unit because the complete renovation of the rental unit in a manner that will require it to be vacant will be required before she will be able to occupy the rental unit. The landlord submitted that the tenancy should end because his mother requires access to the rental unit in order to have input into the planning of the renovations. I do not accept this as a valid premise; landlords are routinely able to plan proposed renovations without first evicting their tenants. The tenant will be required to allow the landlord, along with his mother and the contractor or designer, to have reasonable access to the rental unit upon written notice to plan the renovations. The tenant will be obliged to provide the necessary access pursuant to the provisions of the *Residential Tenancy Act*.

The landlord is at liberty to give the tenant another two month Notice to End Tenancy on the ground 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. Of course, before giving a notice on this ground, the landlord must have in hand the necessary permits and approvals that may be required.

Conclusion

I allow the tenant's application to cancel the Notice to End Tenancy for landlord's use dated October 26, 2015. I order that the Notice to End Tenancy be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The tenant is entitled to recover the \$50.00 filing fee for this application. He may deduct the said sum from a future instalment of rent due to the landlord.

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: December 30, 2015

Residential Tenancy Branch

