



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPT, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for landlord's use of property; for an Order of Possession of the rental unit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy for landlord's use of property was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the tenant is entitled under the *Act* to an Order of Possession of the rental unit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 4, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$895.00 per month is payable in advance on the 4th day of each month and there are no rental arrears. At the

outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$250.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord further testified that the rental unit is actually one of 6 units in a motel. There are 4 units attached in a row, 2 of which are kitchenettes and 2 are 1 bedroom units. Separate from that was a motel residence which was converted into 2 suites with 2 bedrooms each. One is a basement suite, and the other is this rental unit on the upper level. All units are currently vacant except this one. The landlord purchased the motel in 2006.

The landlord decided in September, 2015 to convert the entire property back to a motel. The landlord has to replace windows in 2 bedrooms to bring them to code for egress, remove the kitchen and replace it, remove flooring, bathroom fixtures, replace walls and replace or repair doors all in the basement suite. With respect to the tenant's rental unit, the landlord also has to eliminate the stairs to the basement, install laundry in that area, and replace flooring. The landlord also expects to have to remediate some problems with the structure immediately below, but the extent of it will not be known until demolition is done. The landlord is also replacing or repairing cabinets, repairing walls, repainting throughout the property, will look at appliances, and repair any damage in the kitchen, such as the door. The hinges are 10 years old and some have been replaced. Also, all doors will be removed and hinges replaced if necessary.

The rental unit also has an entrance door to the outside and that room is being used as a second bedroom. It was a door to the original motel office, and that door will be eliminated so that it can properly be used as a bedroom.

The electrical also needs updating. A fire incident occurred prior to the landlord purchasing the property and to repair it, the previous owners took circuits from the basement. To make it easier, they tied in the upper floor circuits with those in basement so rather than run from the upstairs to the breaker box, they simply tied into an existing circuit in the basement and ran it up the wall. The 2 cannot be tied together and the landlord's electrician will resolve it and ensure the circuits for the upper level are separate from those in the lower level. In order to conduct all this work, objects in the way, such as furniture and belongings of the tenant will make it virtually impossible.

The rental unit is about 1200 square feet. Once finished, it will no longer be available for monthly rental and will be rented under the Motel Act and applicable taxes will be charged.

The landlord also pointed out that the tenant's mailing address is different than the rental unit, illustrating that the post office will not create a delivery address for a motel room.

The landlord has provided a copy of a building permit and a copy of an electrical permit, but testified that he does not need the building permit because the work is below the level that requires a permit. The landlord decided to get one in any event in order for the inspector to be involved, especially concerning commercial property. The landlord also will want the inspector's opinion about the stairwell and entrance.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the notice) by personally handing it to the tenant on September 30, 2015. A copy of the notice has been provided and it is dated September 30, 2015 and contains an effective date of vacancy of November 30, 2015. The reason for issuing the notice is: "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 also testified that the entire cost of the building portion is about \$10,000.00 and will begin in the 4-unit portion next week and the basement. He needs to get access to the entire structure that holds the rental unit to do the renovations and upgrade the electrical. There is much more than painting involved. The landlord is a farmer and intends to do the majority of the work himself, but can only do so in winter.

The landlord did not make an oral request for an Order of Possession.

The tenant testified that under the *Residential Tenancy Act*, the landlord must have all permits in place before issuing the notice to end the tenancy. When the tenant was handed the notice, she also received a copy of an electrical permit and application to apply for a building permit, but not any details. The landlord's evidentiary material includes and "Electrical Installation Permit" dated September 30, 2015, and an "Application to: Construct – Install – Site or Move – Demolish," also dated September 30, 2015. When the tenant was handed the notice, the landlord also gave the tenant a copy of both documents, but was very vague. Upgrading the electrical service to 200 amps is already there, and it's in the electrical permit. When the tenant filed the application for dispute resolution, different parts of the *Act* were cited regarding permits and approvals and what constitutes major construction. Now the landlord has changed his plans by extending the scope of the work in order to make it a major construction project.

The tenant has also provided a copy of Residential Tenancy Branch Policy Guideline 2 – Good Faith Requirement When Ending a Tenancy, and has highlighted portions. Also provided is a Residential Tenancy Branch fact sheet which the tenant testified was retrieved from the Residential Tenancy Branch website with certain portions highlighted. Also provided is a copy of a Decision of the director as a sample setting out that all permits must be in place prior to issuing a notice to end the tenancy..

The tenant's unit is already upgraded, and the electrical panel has 2007 written on it. The 4-unit portion needs substantial renovations. In regards to other services on the property, they don't affect the tenant's rental unit. A trailer is also located on the property.

The parties had attended a dispute resolution hearing on September 30, 2015 wherein the tenant had applied for an order cancelling a 1 Month Notice to End Tenancy for Cause. The landlord withdrew the notice at the hearing.

The tenant seeks an order cancelling the notice and for monetary compensation due to the landlord's failure to comply with the rules and regulations and for cancelling the first notice and issuing another. The permits were not in order prior to issuing the notice and there was no description about what renovations would involve. The landlord issued the notice in bad faith because he couldn't prove the first notice to end the tenancy so he issued this one.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

Section 49 of the *Residential Tenancy Act* states, in part:

(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:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;

- (d) convert the residential property into a not for profit housing cooperative under the [*Cooperative Association Act*](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

In this case, the landlord relies on S. 49 (6) (b) and (f).

The tenant referred to information found on the Residential Tenancy Branch website, and specifically to the following:

Major Construction

When possible, renovations should be done without evicting the tenant. For example, if the renovations require the unit to be vacant for a short period, the tenant could be relocated and later return to the unit at the same rent.

Major construction means:

- Demolishing the rental unit or doing major renovations that require the building or rental unit to be empty for the work to be done
- Converting the rental unit to a strata property unit, a not-for-profit housing co-operative or a caretaker's unit
- Converting the rental unit for non-residential use, such as a shop. People can occupy the unit, but it must no longer be a rental unit.

In this case, the tenant disputes the notice on grounds that the tenant was not given any details about the planned renovations, the landlord did not have the permits in place prior to issuing the notice, and the landlord issued it in bad faith having been unsuccessful with a previous notice to end the tenancy. I see no evidence of that. Nor is there any requirement for the landlord to provide the tenant with a scope of the work planned. The landlord testified that the complex is a motel and the tenant did not dispute that. The landlord also testified that once the work is completed it will no longer be a residential unit, but a motel which will require taxes to be charged to guests. The landlord testified as to the amount of work required and that it will be virtually impossible to finish the work while a portion of the building is tenanted. I have no reason to disbelieve that. The permits are dated the same day as the notice, and I am satisfied that the permits were in place prior to the issuance of the notice.

In the circumstances, I find that the landlord has provided good faith intent to convert the rental unit to a non-residential business, and that the permits were in place prior to issuing the notice to end the tenancy.

The tenant's applications to cancel the notice and for an Order of Possession are hereby dismissed.

With respect to the tenant's application for monetary compensation, I see no reason to compensate the tenant any more than the compensation equivalent to one month's rent as required by the *Act*. The tenant has a cheque for that from the landlord and is entitled to cash it. The tenant testified that the claim is for the landlord's failure to comply with the rules and regulations and for cancelling the first notice and issuing another. The *Act* does not permit me to make a monetary order to penalize a party for any wrong-doing, and I cannot find that the tenant has suffered any damage or loss.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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 03, 2015

Residential Tenancy Branch

