



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1 - Kings Avenue Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy.

The Tenant stated that on November 09, 2015 the Application for Dispute Resolution, the Notice of Hearing, and the four pages of evidence the Tenant submitted to the Residential Tenancy Branch on November 09, 2015 were sent to the Landlord, via registered mail. The Property Manager stated that the Landlord received the Application for Dispute Resolution and the Notice of Hearing in the mail but the Landlord did not receive the four pages of evidence allegedly served by the Tenant on that date.

The Tenant was advised that the four pages of evidence allegedly served by the Tenant on November 09, 2015 would not be accepted as evidence. This decision is based, in part, on the absence of evidence that corroborates the Tenant's claim these documents were included in the package mailed on that date or that refutes the Property Manager's testimony that the evidence was not received. This decision is also based on my determination that the parties can discuss the documents submitted during the hearing and that it is entirely possible I will not need to physically view the documents allegedly served on November 09, 2015.

On November 13, 2015 the Tenant submitted three pages of evidence to the Residential Tenancy Branch. The Tenant stated that he believes this evidence "would have been served" on November 13, 2015 or November 15, 2015, although he does not know how it was served. The Property Manager stated that the Landlord did not receive this evidence.

The Tenant was advised that the three pages of evidence allegedly served in November of 2015 would not be accepted as evidence. As the Landlord does not acknowledge receipt of this evidence and the Tenant is not certain of how/when it was served, I find that the Tenant has failed to establish that the evidence was served to the Landlord.

On November 18, 2015 the Tenant submitted two pages of evidence to the Residential Tenancy Branch. The Tenant stated that he does not recall if he served this evidence to the Landlord. The Property Manager stated that the Landlord did not receive this evidence.

The Tenant was advised that the two pages of evidence submitted to the Residential Tenancy Branch on November 18, 2015 would not be accepted as evidence. As the Tenant does not know if the evidence was served to the Landlord and the Landlord does not acknowledge receipt of the evidence, I find that the Tenant has failed to establish that the evidence was served to the Landlord.

On December 11, 2015 the Tenant submitted fifteen pages of evidence to the Residential Tenancy Branch. The Tenant stated that he believes this evidence was served to the Landlord by the Advocate for the Tenant #2. The Property Manager stated that the Landlord did not receive this evidence.

The Advocate for the Tenant #2 was not present at the start of the hearing to provide details on the alleged service. When the Advocate for the Tenant #2 joined the teleconference he stated that he did not serve any evidence to the Landlord until December 31, 2015.

The Tenant was advised that the evidence package submitted to the Residential Tenancy Branch on December 11, 2015 was not being accepted as evidence. I find there is no evidence that establishes this package of evidence was served to the Landlord.

On December 31, 2015 the Tenant submitted nine pages of evidence to the Residential Tenancy Branch. I note that this evidence was previously submitted to the Residential Tenancy Branch on December 11, 2015. The Tenant stated that he believes this evidence was served to the Landlord by the Advocate for the Tenant #2. The Advocate for the Tenant #2 was not present at the start of the hearing to provide details on the alleged service.

When the Advocate for the Tenant #2 joined the teleconference he stated that he sent this evidence package to the Landlord, via registered mail, on December 31, 2015. The Property Manager stated that the Landlord did not receive this evidence.

Residential Tenancy Branch Rules of Procedure requires applicants to ensure their evidence is received by the other party at least fourteen days prior to the start of the hearing. I find that the evidence mailed to the Landlord on December 31, 2015 was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and I refused to accept it as evidence.

In determining that the evidence mailed to the Landlord on December 31, 2015 would not be accepted as evidence, I was influenced by the fact that this evidence was

submitted to the Residential Tenancy Branch on December 11, 2015 and could, therefore, have been served to the Landlord in a timelier manner.

In determining that the evidence mailed to the Landlord on December 31, 2015 would not be accepted as evidence, I was influenced by the Property Manager's testimony that the evidence was not received by the Landlord. I find that it would be highly prejudicial to the Landlord to consider evidence that the Landlord has not had the opportunity to review.

In determining that the evidence mailed to the Landlord on December 31, 2015 would not be accepted as evidence, I was influenced by my conclusion that adjourning the hearing to provide the Landlord with the opportunity to receive this evidence would be unfair to the Landlord. I find it would be unfair to the Landlord because an adjournment would delay the proceedings by several weeks and the Landlord wishes possession of the rental unit as soon as possible.

The Tenant was advised that during the hearing he will be allowed to testify about documents submitted in evidence. The Advocate for the Tenant #2 described the content of the photographs submitted in evidence on December 31, 2015

On December 29, 2015 the Landlord submitted 58 pages of evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was slid under the Tenant's door on December 28, 2015. The Tenant acknowledged receiving this evidence on December 28, 2015. As this evidence was received by the Tenant on December 28, 2015 I find it was served with the timeline established by rule 3.15 of the Residential Tenancy Branch Rules of Procedure, and I accepted it as evidence for these proceedings.

The Tenant stated that he has had sufficient time to consider the Landlord's evidence and he is prepared to proceed with the hearing. The Property Manager stated that the Landlord is prepared to proceed with the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Neither party was permitted to discuss issues I did not consider relevant to the issues in dispute at these proceedings.

Preliminary Matter #1

The Tenant exited the teleconference at approximately 11:26 a.m. No meaningful conversation occurred after I realized he had exited until he rejoined the teleconference at approximately 11:28 a.m.

Preliminary Matter #2

The Tenant asked to call a second witness, with the initials "A.R.". He stated that this person is his first witness's boss and he believes he will confirm her testimony that building permits have been issued. He stated that he does not know if the second witness could add any other relevant information.

As there is no dispute that building permits have been issued and there is no suggestion that the second witness has anything relevant to add to the issues in dispute, I find it highly unlikely this witness could add any relevant testimony and the Tenant was denied the opportunity to call the second witness.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 15, 1992;
- the Tenant is currently paying monthly rent of \$706.20;
- rent is due by the first day of each month; and
- the rental unit is in a residential complex with a total of 19 suites.

The Property Manager stated that a Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 05, 2015, was posted on the door of the rental unit on November 05, 2015. The Tenant stated that he located this Notice to End Tenancy on his door on November 05, 2015.

The Landlord and the Tenant agree that the Notice to End Tenancy that was posted on the door on November 05, 2015 was signed by the Property Manager and that the Notice declares that:

- the Tenant must vacate the rental unit by February 01, 2016; and
- the tenancy is ending because the landlord has all the 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 Property Manager stated that the entire residential complex is being renovated, including the rental unit. The Landlord submitted an undated letter from the Landlord's Witness, who is the project manager, which outlines the scope of the renovations, which includes:

- upgrading the plumbing in the entire residential complex;
- upgrading the electrical system in the entire residential complex, which includes installing new electrical panels in each unit;
- converting the heating from gas to electric baseboard;

- gutting and replacing the cabinets, flooring, and fixtures in the bathroom and kitchen;
- replacing the flooring in the entire residential complex;
- replacing all drywall and drywall joint compound containing asbestos; and
- adding a second bedroom in several units, including the Tenant's rental unit.

The Tenant stated that he does not know the full extent of the renovations planned for the residential complex, but he does not dispute the information provided in the letter written by the Witness for the Landlord.

The Property Manager stated that the renovations have commenced in the common areas of the building and in all suites except for the Tenant's unit and one other unit. The Tenant stated that renovations have commenced in many areas of the residential complex and that all of the suites are vacant with the exception of his unit and two other suites.

The Witness for the Landlord stated that he helped apply for the permits necessary to complete the renovations within the residential complex. He stated that the Landlord has been issued an electrical permit, a mechanical permit, and a building permit, which are the only permits required to complete the renovations within the complex. He stated that the building permit has been posted at the front of the residential complex.

The Tenant stated that he has not seen the building permit that has allegedly been posted at the front of the complex.

The Witness for the Tenant stated that she is employed as a social planner by the municipality responsible for issuing building permits for this residential complex. She stated that for employment purposes she frequently communicates with the parties responsible for issuing building permits for this municipality and she understands that building permits have been issued for renovations to this rental unit.

The Tenant stated that his rental unit was renovated in 2008 and he does not believe further renovations are required. The Advocate for the Tenant #2 described the photographs the Tenant served to the Landlord on December 31, 2015, which included:

- a photograph of the plumbing under a kitchen sink, which the Tenant contends was upgraded in 2008;
- a photograph of an electrical outlet for the stove, which the Tenant contends was upgraded in 2008;
- a photograph of the plumbing under a bathroom sink, which the Tenant contends was upgraded in 2008;
- a photograph of the bathroom, which had a new vanity, toilet, and electrical outlet added in 2008;
- a photograph of the deck, which the Tenant contends was replaced in 2008; and
- a photograph of the bathroom floor, which was installed in 2008.

The Property Manager stated that he does not know if the rental unit was upgraded in 2008. He stated that the upgrades described by the Tenant are largely cosmetic and the planned renovations are much more significant.

The Property Manager stated that the planned renovations are extensive and that the rental unit must be vacant before the renovations can be completed. This position is corroborated by the document written by the Witness for the Landlord which outlines the scope of the planned renovations.

The Witness for the Landlord stated that the same renovations that are currently being made in unit #207 are planned for the Tenant's unit, which includes adding a second bedroom. The Landlord submitted photographs of the renovations underway in unit #207, which show the unit has been "gutted" including the removal of an extensive amount of drywall.

The Tenant argued that he can remain in his rental unit during the planned renovations with proper notice to enter the rental unit whenever necessary. This submission is based, in part, on his belief that much of the plumbing and electrical work can be done from the lower suite, which is currently vacant. He does not know how the Landlord could add a second bedroom while he is occupying the rental unit.

The Landlord submitted a report from an environmental assessment company, which declares that drywall in most of the suites must be removed as it contains asbestos. The report does not specifically mention the Tenant's rental unit or the other suite that the Landlord contends is still occupied.

The Property Manager stated that the Landlord assumes that some of the drywall in those suites also contains asbestos. He stated that the asbestos is hazardous to humans when it is disturbed and that it must be handled in accordance with the precautions outlined in the environmental report.

The Tenant stated that he is not aware there is asbestos in his rental unit.

Analysis

On the basis of the undisputed evidence, I find that a Two Month Notice to End Tenancy for Landlord's Use of Property, which was served pursuant to section 49 of the *Residential Tenancy Act (Act)*, was posted on the door of the rental unit on November 05, 2015.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy must end the tenancy on a date that must be not earlier than 2 months after the date the tenant receives the notice and, when ending a month-to-month tenancy, on the day before the day in the month, or in the other period on which the tenancy is based, that rent is due.

On the basis of the undisputed evidence, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property which was posted on the door of the rental unit on November 05, 2015 declared that the Tenant must vacate the rental unit on February 01, 2016. As the rent is due on the first day of each month, I find that this Notice to End Tenancy must end the tenancy on the last day of any given month.

Section 53 of the *Act* stipulates that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. As the Landlord does not have the right to end the tenancy on the first day of the month, I find that the effective date of the Notice to End Tenancy is actually February 29, 2016.

Section 49(6)(b) of the *Act* authorizes a landlord to end a tenancy in respect if 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.

On the basis of the undisputed evidence, I find that the Landlord has plans to make extensive renovations to the residential complex; that the renovations have commenced; and that the majority of the suites in the complex have been vacated to facilitate the renovations. Given that the Landlord has already embarked on extensive renovations I find that the Landlord intends, in good faith, to renovate the rental unit in the manner described by the Witness for the Landlord.

On the basis of the evidence of the Witness for the Landlord and the Witness for the Tenant and in the absence of evidence to the contrary, I find that the Landlord has all the necessary permits and approvals required to complete the planned renovations.

In adjudicating this matter I have placed little weight on the Tenant's submission that his rental unit does not require renovating, as it was upgraded in 2008. I find that the scope of renovations planned by the Landlord far exceed the upgrades the Tenant reports were completed in 2008. I find that the Landlord has every right to embark on extensive renovations to the Landlord's property even if the Tenant does not think the renovations are necessary.

I find that the renovations planned by the Landlord are significant and that the Landlord requires vacant possession of the rental unit to complete those renovations. This is based, in large part, on the photographs of unit #207 which mirror the planned renovations for the Tenant's rental unit. I find it would be unreasonable for anyone to occupy the rental unit during renovations of this nature.

On the basis of the environmental report submitted in evidence, I find there is likely asbestos in the rental unit and that the rental unit should not be occupied while anything containing asbestos is removed. This supports my conclusion that it would be unreasonable for anyone to occupy the rental unit during the renovations.

I find that the Landlord has established grounds to end this tenancy, pursuant to section 49(6)(b) of the *Act*. I therefore dismiss the Tenant's application to set aside this Two Month Notice to End Tenancy, dated November 05, 2015.

The Landlord and the Tenant are reminded of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenant are also reminded of the provisions of section 51(1.1) of the *Act*, which authorizes the Tenant to withhold the last month's rent in compensation for the amount due under section 51(1) of the *Act*.

Conclusion

The Two Month Notice to End Tenancy, dated November 05, 2015, is upheld. The Tenant is required to vacate the rental unit by 1:00 p.m. on February 29, 2015, which is the effective date of the Notice to End Tenancy.

An Order of Possession has not been issued, as the Landlord did not request an Order of Possession at the hearing.

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: January 08, 2016

Residential Tenancy Branch

