



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLAYMORE DEVELOPMENT CO LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL RP RR FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("the 2 Month Notice") pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant attended on behalf of his family and he confirmed receipt of the landlord's evidentiary materials for this hearing. The landlord and a property manager attended on behalf of the landlord and they both confirmed receipt of the tenant's application for dispute resolution hearing package. The landlord made an oral application for an Order of Possession should the tenant be unsuccessful in his application to cancel the Notice to End Tenancy.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs or services agreed upon but not provided by the landlord?

Is the tenant entitled to an order that the landlord make certain reports to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on or about May 1, 2000 with a current rental amount of \$1423.00 payable on the first of each month. The landlord confirmed that he continues to hold the \$500.00 security deposit paid by the tenant on May 1, 2000. On October 30, 2015, the property manager personally served the tenant with a 2 Month Notice to End Tenancy. The tenant confirmed receipt of this 2 Month Notice and applied to cancel the notice to end tenancy. The landlord has applied for an Order of Possession should the tenant be unsuccessful in his application.

The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reason for seeking an end to this tenancy:

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 tenant submitted that he disputes that the landlord intends to renovate or repair the rental unit; he disputes that it is necessary to renovate or repair the rental unit; and he disputes that the tenants must vacate for any work to be completed.

To respond to the submissions of the tenant disputing the 2 Month Notice, the landlord submitted correspondence between the landlord and tenant with respect to residential tenancy issues, including a letter dated October 30, 2015 attached to the 2 Month Notice advising the tenants that extensive renovations will be done on the unit and the unit will not be habitable for an extended period of time.

The landlords also submitted;

- a copy of the city permit to "re-pipe sections of water piping" at the tenant's residential address;
- a table indicating the work to be done on the rental unit and the current lifetime of the items within the rental unit; as well as
- a letter from a construction company indicating the details and extent of the renovation to be undertaken.

The letter submitted by the landlords from the construction company is dated November 5, 2015 and is described as a contract for services. Those services, estimated in cost at \$27, 400.00 include; renovation of upstairs bath, downstairs bath, kitchen, removal and replacement of all floors, appliances and repair of walls after cutting walls open for

plumbing work. The letter also indicates that all of the renovation will take approximately 5 weeks.

The property manager testified that the building is 43 years old and that over the past several years, all vacated units at the residential premises have been renovated in a similar fashion to the description in the letter from the contractor. The property manager submitted that, despite the cleanliness and care of all of the long term tenants, plumbing work and other renovations are essential at this point in the life of the building. He testified that, in his experience during renovation of other units, the work has taken over 6 weeks.

The landlord testified that the notice to end tenancy is no reflection on the tenants but merely that the landlord can no longer wait to conduct repairs. The landlord submitted that the tenant's own request for repairs to be done to the rental unit shows that small external repairs are only the beginning of the repairs required for this and many other units within the townhouse complex where the tenant and his family reside.

The tenant also sought an order for repairs of the unit including painting the downstairs portion of the home as well as repair to a patio door lock and the replacement of the toilet seats in the bathroom. The tenant acknowledged the residence is 43 years old and that there are likely more repairs to be done. However, the tenant argued that some of the repairs can be done at a later date and that the tenants have taken good care of their home for 16 years. He testified that, if his family is required to move, he would like a rent reduction to reflect work he has done on the unit including the painting of the upstairs of the home. The tenant did not submit any receipts or photographic evidence with respect to the rental unit.

Analysis

Section 49(2) of the *Act* provides that a landlord may end a tenancy for "landlord's use" under the following circumstances;

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The landlord issued a 2 Month Notice to End Tenancy on October 30, 2015 requiring the tenants to vacate the unit as of January 1, 2016. Their original submissions indicate that their intent was to begin work on the rental unit on January 4, 2016. The city permit submitted by the landlords for plumbing work was acquired October 30, 2015 and indicates that they have received permission to conduct plumbing work within the tenant's rental unit.

Under section 49 (6)(b) of the Act, a landlord may end a tenancy 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". The good faith requirement within section 49(6)(b) is discussed further under Residential Tenancy Policy Guideline No. 2,

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. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

I do not find that there is any evidence of malice or ulterior motive on the part of the landlord. The testimony of both the landlord and the property manager were straight forward, clear and without internal contradiction. The tenant testified that he did not believe that the landlord would renovate the unit but he provided no clear indication of why he held this belief. He acknowledged that other units have been renovated when they have been vacated, that the building is 43 years old and that at least some repairs are required. I do not find that the tenant has presented evidence that calls the landlord's intent into question and therefore, the landlord is not under a strict burden to establish their true intent.

I find that the landlords did in fact provide sufficient evidence of their true intent by presenting evidence to support their 2 Month Notice. The landlord submitted both a contract with details of the repair and renovation work to be done. The landlord also submitted a copy of the city permit to conduct plumbing work. I accept the testimony of the property manager that this plumbing work will necessitate the opening of the walls within the rental unit. I accept the submissions of the landlord that, given the age of the building the repair and renovation work may take 5 or more weeks to complete. I accept that, given the fact that this rental unit is a townhome, the landlords are in no position to accommodate the tenant's family in another residence for any period of time.

Given that I accept that testimony of the property manager and the landlord and that they have presented clear documentary evidence of their intent to repair and renovate the rental unit for a period of time that requires the tenants to vacate the rental unit, I dismiss the tenant's application to cancel the notice to end tenancy.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord applied orally at the hearing for an Order of Possession pursuant to section 55(1) of the *Act* allowing a landlord to make such a request. As the tenant's application to cancel the 2 Month Notice is dismissed, I find that the landlord is entitled to an Order of Possession dated January 31, 2016.

I provide here two sections of the *Act* in relation to ending a tenancy for landlord's use for the benefit of both parties. I note that the tenant will receive both compensation and an avenue of recourse if he is able to show, at a later date that the landlord did not use the rental unit for the intended purpose. Section 51 provides the particulars of tenant compensation with respect to a 2 Month Notice;

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on my finding that the landlord's 2 Month Notice is valid, I need not consider the tenant's application for repairs to the rental unit. I dismiss the tenant's application for an order for the landlord to make repairs to the rental unit.

The tenant provided no documentary or photographic evidence to support an application for a rent reduction. There is no supporting evidence for his claim that he has done work and repairs within the rental unit and that he has incurred costs not compensated by the landlord. I dismiss the tenant's application for an order to allow the tenant to reduce his past rent.

As the tenant was unsuccessful in his application, I do not find he is entitled to recover the filing fee for this application.

Conclusion

The tenants' application is dismissed in its entirety, with the effect that this tenancy will end on January 31, 2016.

I grant the landlords an Order of Possession dated January 31, 2016. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 11, 2016

Residential Tenancy Branch

