



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wakesiah Apartments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

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 landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated February 29, 2016 be cancelled?

Background and Evidence

The rental property is a 38 unit apartment building in Nanaimo. The tenant resides in the rental unit. She was personally served with a two month Notice to End Tenancy for landlord's use dated February 29, 2016. The Notice required her to move out of the rental unit by April 30, 2016. The tenant applied to dispute the Notice to End Tenancy on March 10, 2016. The stated reason for the Notice to End Tenancy is 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.

The landlord submitted a written description of the planned renovations to the rental property. The landlord said that:

This property will be undergoing clean up and renovation of all 38 units, there has been a full Hazardous Materials survey completed and we the Owner/Contractors are following protocol to clean up the suites as outlined below. Tests showed there was Asbestos in all drywall joint compound as well as significant mould in many areas due to continued moisture. Due to the presence of these harmful materials being disturbed as part of this process and

the nature and extent of this renovation, the units will be unliveable during renovation.

The landlord listed the planned work that included removal of all drywall, removal of all appliances, cabinetry, electrical and plumbing fixtures, the boiler heating system and all floor coverings. Exterior upgrades include, new windows, a new roof and structural repairs to roof framing. The landlord said in its submission that:

Although many of the interior upgrades do not require a building permit, we have obtained an electrical permit with the BC Safety Authority, and are in the application process for a District building permit for some structural repairs to the roof framing due to rot and decay.

The tenant testified that the landlord commenced work on the rental property, but in mid-March a "Stop Work Order" was posted on the building and since then the landlord has not performed work on the property. The tenant said she hoped to be able to move out of the rental unit for a short period and perhaps stay in a hotel until the work was completed and then move back into the rental unit.

The landlord's representative clarified that the stop work order was issued after the landlord discovered some rotting structural members and was required to apply for a building permit to complete the work. The landlord has applied for the necessary permit but it has yet to be issued.

Analysis

Section 49 (6) of the *Residential Tenancy Act* provides that a landlord may end a tenancy if he has all of the permits and approvals required by law, to renovate or repair the rental unit in a manner that requires the unit to be vacant.

Upon the evidence presented by the landlord, the work to be done to the rental property includes work that requires a permit from the District. The landlord has applied for the permit, but as of the date of the hearing it has not been issued. I therefore find that the Notice to End Tenancy dated February 29, 2016 was issued prematurely because the landlord did not have all the necessary permits required by law when it issued the Notice to End Tenancy. I allow the tenant's application to cancel the Notice to End Tenancy and I order that the Notice be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The landlord is at liberty to issue another Notice to End Tenancy for landlord's use once the necessary permit has been issued.

Conclusion

The tenant's application has been granted the Notice to End Tenancy has been cancelled.

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: April 22, 2016

Residential Tenancy Branch