



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a two month Notice to end tenancy for landlords' use of the property issued on January 28, 2016 and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were given an opportunity to ask questions about the process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The landlord did not make a written submission.

Issue(s) to be Decided

Should the two month Notice to end tenancy for landlord's use of the property issued on January 28, 2016 be cancelled?

Background and Evidence

The parties agreed that a two month Notice to end tenancy for landlord's use was given to the tenant on January 28, 2016. The tenant applied to cancel the Notice within 10 days. The Notice has an effective date of March 31, 2016. The Notice gives one reason:

"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 tenant has lived in the rental unit for 15 years. There are three bedrooms, 1.5 baths and three levels in the unit. Rent is due on the first day of the month but the landlord said he is flexible on the payment date. The landlord has owned the duplex for the past six or seven years. When the last tenants vacated the other side of the duplex the

landlord completed updates to that unit. The landlord now wishes to complete a renovation in the tenants' unit.

The landlord said that he wants to complete the following work in the unit:

- Renovate both bathrooms;
- Paint;
- Replace interior and exterior doors;
- Install laminate flooring;
- Replace locks;
- Replace all windows;;
- Replace the hot water tank;
- Replace a ceiling fan; and
- Replace the kitchen counter.

The landlord mentioned some electrical upgrades that he would like to complete, but that work is outside of the renovations he plans on immediately carrying out. The landlord said he has talked with city officials and has been told that as long as he does not alter plumbing or the size of windows he does not require permits.

The landlord has a contractor and thinks the work will take four to six weeks. The landlord works shifts and also plans on working on the unit during his off time, some of which would be at odd hours of the day. In order to accommodate the work schedule the unit should be vacant.

The landlord had offered the other side of the duplex to the tenant but he did not wish to move. That unit was rented effective February 2016.

The landlord said that the tenant cannot be accommodated as that would limit what could be completed.

The tenant said that in late 2015 he and landlord entered the neighbouring unit to view the work that had been completed. The landlord told the tenant he was planning to replace the main floor flooring, kitchen cabinets, the upper bathroom flooring, vanity and toilet, the doors and windows in the tenants' unit. The tenant is a contractor and has worked for years installing windows and doors and is familiar with renovations. The tenant has worked in many houses where this kind of work has been completed without the residents vacating. Contractors prefer occupants move out, but if they insisted on vacant units the tenant doubts they would remain in business very long.

The tenant agrees that the unit is dated and does not doubt that the landlord wishes to carry out the upgrades in the unit. The tenant is willing to move between floors and deal with some inconvenience during this work. The tenant does not mind the landlord carrying out work over some weekend days, but would not like work to be completed

late in the night. The tenant is willing to make accommodation so the landlord can complete the updates to the unit.

Analysis

In reaching my decision I have considered a judgment issued by the British Columbia Supreme Court in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257. This decision sets out issues an arbitrator should consider when a landlord wishes to end a tenancy based on section 49(6) of the Act:

"[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use "vacant" to mean "empty". Thus, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in Allman. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a "loophole" for landlords."

After considering all of the evidence submitted at this hearing and *Berry and Kloet*, I find that the two month Notice ending tenancy for landlords' use of the property issued on January 28, 2016 is of no force and effect. The Notice is cancelled and the tenancy will continue until it is ended in accordance with the Act.

There was no dispute that the landlord intends to complete the upgrades to the rental unit, as set out during the hearing. However; I find, on the balance of probabilities that the landlord is attempting to end a 15 year tenancy based on factors that relate more to convenience and perhaps cost-effectiveness, rather than an absolute need for vacant possession. From the evidence before me I find that the attempt to end the tenancy based on the level of renovation set out by the landlord does not meet the standard required for vacant possession.

When considered individually I find that all of the renovation work could be planned and completed in stages that are completed within a reasonable period of time. The landlord did not present any schedule of work. There was an absence of evidence that a schedule could not be created to accommodate the tenancy continuing. The only items that would cause any level of real disruption will be the kitchen counter and bathroom updates. Those are renovations that are commonly completed with an occupant in the home.

The tenant has agreed to accommodate the landlord and has suggested the work be completed by floor. This will allow the landlord to maintain the tenancy and also complete the repairs. I find this is an appropriate option that will allow the tenancy to be maintained and for the landlord to complete repairs within a reasonable period of time. There are two bathrooms in the home; which will allow the use of one, while work is completed in the other.

Therefore, the tenancy will continue until it is ended in accordance with the legislation.

As the application has merit I find, pursuant to section 72 of the Act that the tenant may deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The two month Notice ending tenancy for landlord's use of the property issued on January 28, 2016 is cancelled.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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 01, 2016

Residential Tenancy Branch