



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPCORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the "Act"), to cancel 2 Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on June 24, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on August 31, 2016.

The reason stated in the Notice was:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse); and
- The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent indicated that the first reason on the Notice was in error.

The landlord's agent testified that they have the necessary permits to renovate the rental unit. The agent stated that the kitchen and bathroom will be renovated. The agent stated there are no changes to the living room or bedroom. The agent stated that the work will commence September 1, 2016 and continue for approximately four to six weeks and there may be a period of time that there will be no water or that the bathroom will be unusable. The agent stated that the workers work between the hours of 8am to 5pm Monday to Friday.

The tenants testified that the landlord approached them last night that they could stay only if they agreed to increase the rent by almost 50% after the renovation was completed. The tenants stated that they believe this simply is a renovation to increase the rent. The tenants stated that they are prepared to accommodate the landlord to have the work completed by keeping their belongings in the living room and bedroom. The tenants also stated if needed they have a sister that they could stay with or use their facilities if need be. The tenants stated if they are allowed to stay during the renovation they seek permission to add a lock to their bedroom door simply to be able to secure their valuables while the workers are in the rental unit.

The landlord's agent does not deny they had a conversation with the tenants that they could stay in another unit during the renovation only if they agreed to increase the rent. The agent stated a large amount of money is being invested and a rent increase is appropriate.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Giving a Notice to End Tenancy for Landlord's Use of the Property requires that the landlord under section 49(6) of the Act requires the landlord to show that the renovations being proposed require vacant occupancy of the rental unit.

In this case, I accept the landlord is planning on renovating the kitchen and bathroom of the subject rental unit and has the necessary permits. However, I am not satisfied that proposed renovations require vacant possession of the unit, as only the kitchen and bathroom are subject to the renovation, leaving the living room and bedroom untouched. The landlord provided no reports, such as an engineer or an electrician to indicate why the renovation would require vacant possession. I find the landlord has failed to prove that the renovations to the rental unit require vacant possession. Therefore, I grant the tenants' application to cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

In this case, the tenants wanted the tenancy to continue. The tenants are agreeable to accommodate the work by removing their belonging from the kitchen and bathroom and allowing access to the unit Monday to Friday 8am to 5pm, or any other time that is required. The tenants are also able to stay with a family member if needed for short stays.

Therefore, I find it appropriate to make the following Orders:

1. Commencing September 1, 2016 and continuing for approximately four to six weeks or until the renovation is complete. The tenants must give the landlord and workers access

to the rental unit from 8:00am to 5:00pm Monday to Friday. Should the landlord require access outside of these dates and times, they must give the tenants notice.

2. The tenants must not get involved with the renovation process or interfere with the landlord's rights to conduct their business as they determine appropriate.
3. The tenants must remove their belongings from the kitchen and bathroom areas in order for their belongings not to interfere with the work. It is the tenants' responsibility to ensure their belongings are protected from dust, etc.
4. The tenants are authorized to install a lock on their bedroom door so they can ensure their valuables are safe guarded.
5. The tenants are not entitled to any compensation or rent reduction during this time as it was their choice to continue the tenancy and the renovation will be for their benefit.

Should the tenants fail to comply with my Orders, the landlord is at liberty to issue a 1 Month Notice to End Tenancy for Cause, for failure to comply with a director's order.

Conclusion

The tenants' application to cancel the Notice, issued on June 24, 2016, is granted. The tenancy will continue until legally ended in accordance with the Act. The tenants must comply with my above orders.

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: August 25, 2016

Residential Tenancy Branch