Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNR, CNC

Introduction

The tenant has applied requesting more time to cancel a one month Notice to end tenancy for cause and a 10 day Notice to end tenancy for unpaid rent.

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 provided with an opportunity to ask questions about the hearing 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. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the hearing documents given in July, 2016. The parties each confirmed receipt of evidence given by the other and that they had ample time to review that evidence.

The parties confirmed that a 10 day Notice to end tenancy for unpaid rent has not been issued. The parties confirmed that only the two month Notice had been issued.

There was no dispute that the tenant received the Notice on June 30, 2016 and applied to cancel the Notice on the fifteenth day after receipt. Therefore, the tenant does not require more time to cancel the Notice.

Issue(s) to be Decided

Should the two month Notice ending tenancy for landlord's use of the property issued on June 30, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced on January 1, 2012. Rent is $900.00. A copy of the tenancy agreement supplied as evidence did not indicate the day rent is due, but the parties agreed it is due on the first day of each month.

The landlord and the tenant agreed that a two month Notice to end tenancy for landlord's use of the property was served to the tenant indicating that the tenant was required to vacate the rental unit effective August 31, 2016. The Notice provided one reason for ending the tenancy:

> *"the landlord has all the 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 stated that they plan to completely renovate the unit. The kitchen, bathroom, appliances, doors, flooring and windows will be replaced. The landlord wishes to sound-proof the unit. The unit will be painted. The landlord said that since they purchased the unit in 2010 no work has been completed and that it is a "gut job." The landlord said he is experienced completing renovations and he is confident that since they will not be altering the structure or working on plumbing and wiring permits and approvals are not required.

The tenant said that she questions the good faith of the landlord as there have been complaints from other tenants regarding a loss of quiet enjoyment. The tenant said she is willing to accommodate the landlord so that renovations can take place while the tenancy continues.

Analysis

The landlord has the burden of proving the reason given on the Notice ending tenancy. The landlord supplied written submissions for this hearing. That evidence did not provide any plan for the renovations. During the hearing the landlord provided a brief description of the planned repairs.

The landlord did not supply a detailed plan for construction; no time-lines and no confirmation that permits or approvals were not required for what was described as a complete renovation of the interior of the rental unit, including sound-proofing. From the evidence supplied it appears that doors, flooring, windows and painting and appliance replacement are all repairs that can be easily accommodated by a tenant. These repairs can be planned and a tenant can accommodate rather than accepting the end of the tenancy. That would leave the kitchen and bathroom and sound-proofing, which again I find could be accommodated with some planning between the parties. These are repairs that homeowners routinely live through without vacating their homes or by vacating for short periods of time.

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 of the Act. The decision referenced the reasoning when a Notice to end tenancy has been issued:

> *"[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."*

As the tenant says she is willing to accommodate the landlord, rather than losing her rental unit, I find that there is no reason to support the end of this tenancy. It may be more convenient and economical for the landlord to have the tenancy end, but accommodation by the tenant will allow repairs to be completed.

The landlord has confirmed that no structural, plumbing or wiring changes will be made to the home. I find that this supports my analysis that the work to be completed is not so extensive that vacant possession must be granted to the landlord.

During the hearing the tenant made submissions regarding the good faith intention of the landlord. I declined to hear those submissions, in error. However, I have come to my decision based on an absence of evidence that the rental unit must be vacated in order for the repairs to be completed, without the need to consider the good faith intention of the landlord.

Therefore, after considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reason given on the Notice ending tenancy issued on June 30, 2016.

The Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The landlord is at liberty to complete repairs to the rental unit, as set out in section 32 of the Act. The repairs must be completed within a reasonable period of time. The tenant has agreed to accommodate the repairs.

Section 29 of the Act is appended after the conclusion of this decision as entry to the unit was referenced during the hearing.

Conclusion

The two month Notice to end tenancy for landlord's use issued on June 30, 2016 is cancelled.

No other Notice to end tenancy has, to date, been issued by the landlord.

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: September 08, 2016

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).