



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW ORLEANS COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy. He had applied for relief regarding repairs to the rental unit but he confirms those matters were dealt with in a previous hearing and are not being pursued at this hearing.

The Notice in question is dated September 28, 2016. The tenant received it September 29. The Notice states that 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.

Such grounds, if proven, are lawful grounds for ending a tenancy under s. 49 of *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing, the landlord by its authorized representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the grounds for the Notice substantiated by the facts proved at this hearing?

Background and Evidence

The rental unit is a one bedroom apartment in a 58 unit apartment building constructed in the 1950s or '60s.

The tenancy in this rental unit started in July 2016. The current monthly rent is \$990.00. The landlord holds a \$475.00 security deposit.

The tenant has had significant problems with flooding. When it rains heavily, his sink overruns. This problem has been the subject of a previous hearing, earlier this month (file number recorded on front page of this decision).

The flooding has occurred because the drain from the apartment building roof runs down through the wall and, for some reason, connects with the drain pipe from the tenant's kitchen sink. The roof drain pipe is of a larger diameter than the sink drain pipe. The sink drain pipe cannot therefore accommodate all the water running down the roof drain pipe during heavy rain and the water comes back up and into the tenant's sink.

The landlord has had a plumbing company, run by Mr. M.Z., look into the problem. Mr. M.Z. provided his report and testifies about the nature of the problem and that in order to conduct repairs the kitchen cabinets around the sink area will have to be removed and part of the kitchen floor, perhaps a four foot by eight foot area, will have to be taken up. His report says that his company will need the unit "to be empty."

Ms. T.S. testifies that the work has not yet been contracted for. There is no date set for the work to commence. She gave no indication of how long the repair work is expected to take, nor how much it will cost.

Analysis

Section 49(6) of the *Residential Tenancy Act*, allows a landlord to end a tenancy in the particular circumstances of demolition, repair or renovation. It provides:

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following;
 - (a) demolish the rental unit;
 - (b) **renovate or repair the rental unit in a manner that requires the rental unit to be vacant;**
 - (c) convert the residential property to strata lots under the *Strata Property Act*;
 - (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(emphasis added)

The law applied regarding such a two month Notice to End Tenancy for repair or renovation has been set out in at least two decisions of the B.C. Supreme Court: *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, Slade, J., and *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Williamson, J.

In the *Berry* case, Mr. Justice Williamson confirmed that the *Residential Tenancy Act* is a statute that seeks to confer a benefit upon tenants; it seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in the favour of the benefited group; the tenant. He indicated that section 49(6)(b) of the *Act* sets out three requirements:

- (a) The landlord must have the necessary permits;
- (b) The landlord must be acting in good faith with respect to the intention to renovate; and
- (c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.

In regard to the third requirement, he indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant, empty, in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

In this dispute it is not apparent that any permits or authorizations are required to perform the work.

I find that the landlord has a good faith intention of remedying the problem discovered by Mr. M.Z.'s company.

It has not been shown that the landlord requires vacant possession of the rental unit in order to perform the repairs. Certainly no home owner facing such a repair would consider having to move out. People renovate their kitchens all the time, including new cabinets and flooring, without considering moving away. At worst, an night or two elsewhere might be considered to avoid being bothered by the work might be considered.

Even if it could be said that the tenant should properly stay elsewhere during the work, it has not been shown why his tenancy should end.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated September 28, 2016 is cancelled. The tenant is entitled to recover the \$100.00 filing fee for this application. I authorize him to reduce his rent due January 1, 2017 by \$100.00 in full satisfaction of the fee.

This decision was rendered orally at hearing 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: November 30, 2016

Residential Tenancy Branch