



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOOD - DENT ENTERPRISES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated and received December 30, 2016.

The Notice claims that the landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair it in a manner that requires the rental unit to be vacant. It is not disputed but that the landlord needs to renovate the rental unit after a significant flood event.

Both parties attended the hearing, the corporate landlord by its two 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

Does the landlord have all the necessary permits required to carry out the renovation and does it require vacant possession to do so?

Background and Evidence

The rental unit is a one bedroom apartment above street level commercial premises, an unopened medical clinic and a physiotherapy office.

The tenancy started on May 2014. The monthly rent is currently \$720.00, due on the first of each month, in advance. The landlord holds a \$350.00 security deposit.

Just before Christmas 2016, under a heavy snow load, the roof of the building failed, permitting large quantities of water into the tenant's living room area and down into the commercial space below, particularly the medical clinic.

The landlord attended immediately to a patch of the roof and the leakage has ceased. The roof will be properly repaired when weather permits.

The landlord's representatives have had a worker assess the damage to the tenant's suite and present a letter from T.B.S. Ltd. (full name redacted for privacy reasons) dated January 18, 2017. The letter is unsigned. It indicates that it will carry out "the demolition and renovation process" but would need the premises vacant "so we can take samples for the hazardous materials survey."

The letter states that T.B.S. Ltd. cannot give an exact timeline for completion of the renovation as they do not know what damage they will find and how much repair will be needed once the "demolition" is complete. The letter says they will begin the hazardous materials survey as soon as the premises have been fully vacated.

The tenant says she looked up T.B.S. Ltd. on the internet and it describes itself as a janitorial company.

The landlord retained a second contractor as well. A letter was provided from it but it had not been properly served on the tenant prior to this hearing and as a result, its admission as evidence was refused.

The tenant says she is willing to relocate or stay with a friend during the repair process but the landlord's representatives have indicated that they want their son to move in afterwards.

Analysis

It was not shown that any permits were required to carry out the renovation work.

I find that the landlord has not established that vacant possession of the premises is needed in order to conduct flood repairs.

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 regarding subsection 49(6)(b) 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 favour of the benefited group; that is, 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 case, T.B.S. Ltd. letter is unsigned, significantly detracting from the weight to be given to it. It offers no indication of having any expertise or accreditation in matters for which it offers its opinion. It offers no basis for its conclusions. For example, why the rental unit must be vacant to take samples for a hazardous materials survey. Nor has it been explained why, even if the rental unit must be vacant for the hazardous materials survey, the tenancy must end and the tenant move elsewhere.

It has not been shown by the landlords why vacant possession of the premises and an end to this tenancy is required in order to carry out the renovations.

Conclusion

The tenant's application is allowed and the two month Notice to End Tenancy dated December 30, 2016 is hereby cancelled.

The tenant is entitled to recover the \$100.00 filing fee for this application. I authorize her to reduce her next rent due by \$100.00 in full satisfaction of the fee.

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: February 01, 2017

Residential Tenancy Branch