



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's Two Month Notice To End Tenancy for Landlord's Use of Property (the "Two Month Notice").

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with two witnesses, "J.S." and "J.Y.", who are property managers for the landlord. Witness J.S. and Witness J.Y. also gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord's agent, Witness J.S., assisted the landlord at the hearing by acting as a translator.

Issue(s) to be Decided

- Is the tenant entitled to cancellation of the landlord's Two Month Notice?

Background and Evidence

The undisputed evidence established that a tenancy started on November 15, 2012 for a fixed term of one year after which the tenancy has continued on a month to month basis. The current rent is \$2,880.00 due on the first day of each month.

The landlord served the tenant with a Two Month Notice dated November 14, 2016, with an effective move out date of January 31, 2017.

The landlord testified that he wants to complete extensive renovations and repairs to the rental unit which require the rental unit to be vacant. The landlord testified that he has the necessary strata council approval and that no other permits are required. The landlord submitted a copy of his request for strata approval dated October 24, 2016. The landlord testified that he wanted to do the following renovations which were approved by the strata council on November 21, 2016:

- Interior painting including all rooms and ceilings;
- Installation of laminate flooring in the master bedroom, dining and living room, and den;
- Installation of new cabinetry and countertop for the bathroom and ensuite; and
- Refurbishing of existing kitchen cabinetry and countertop.

The landlord estimates that it will take two months to complete the renovations and repairs.

Witness J.Y. testified that the rental unit needed to be vacant to do the renovations and repairs due to the paint fumes which the witness testified were “dangerous”. The witness also testified that it would be easier to do the renovations without the tenant in the unit and faster to complete. The witness also added that the tenant’s possessions would be at risk of damage if the unit was not vacated.

Witness J.S. also testified that the renovations and repairs will require the unit to be vacant as the kitchen will be dismantled and that without a kitchen the unit would not be suitable for occupation.

The tenant questioned the landlord’s good faith arguing the proposed renovations aren’t necessary. The tenant submitted photographs of the condition of the unit.

The tenant also questioned the landlord’s good faith by relying on the date of the first letter the landlord sent to the tenant requesting the tenant to vacate the unit due to renovations and repairs. The tenant testified that he received the landlord’s first letter on September 15, 2016, before the landlord had inspected the tenant’s unit on September 28, 2016. Similarly, the tenant relied on the fact that the landlord issued the Two Month Notice on November 14, 2016, before approval was granted by the strata council on November 21, 2016.

The tenant argued that the renovations and repairs do not require the rental unit to be vacant. The tenant argued that the landlord's true motive is to have the tenant move out so that the landlord can increase the rent under a new tenancy agreement.

The tenant is seeking to cancel the Two Month Notice.

Analysis

Section 48(6) (b) of the *Act* permits a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. Furthermore, the guideline provides that if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.

In the circumstances before me, while the landlord may intend on completing the renovations, I find that the landlord has not met the burden of establishing that the renovations and repairs require the unit to be vacant. In making this finding, I have taken into consideration the fact that the landlord does not require any permits for the work; and the landlord did not seek approval from the strata for any electrical work, plumbing or structural work. I find that the renovations and repairs that the landlord has described are not significantly different than the standard cosmetic upgrades that property owners do without having to vacate.

Based upon the testimony of Witness J.Y., I find that the landlord's wish to end the tenancy to complete the renovations and repairs is motivated out of self-interest rather than necessity. Accordingly, I find that there is insufficient evidence that the renovations and repairs require the tenant to vacate the unit.

Based on the foregoing, I find that the tenant is entitled to cancellation of the Two Month Notice and the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant's application is successful.

I cancel the Two Month Notice and the tenancy will continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: February 01, 2017

Residential Tenancy Branch