



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlords' application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for the landlords' own use, of the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants' agent, EW, ('tenants'), appeared and spoke on behalf of the tenants their agent, and was given full authority to do so.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenants duly served with copies of the landlords' Application and evidence. The landlords confirmed receipt of the tenants' evidence. In accordance with section 88 of the *Act*, I find the landlords duly served with copies of the tenants' evidence.

The tenants confirmed that on November 26, 2016, they received the landlords' 2 Month Notice to End Tenancy for Landlord's Use ('2 Month Notice') with an effective date of January 31, 2017. In accordance with section 88 of the *Act*, I find the tenants duly served with the 2 Month Notice on November 26, 2016.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession so they may end the tenancy for their own use?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenants have been residing at this rental suite in a sixteen unit apartment building for over nineteen years, with rent currently set at \$690.00 per month, payable on the first day of the month.

The landlords issued the 2 Month Notice, with an effective move-out date of January 31, 2017, for the following reason:

- 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 landlords provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued in order to do extensive renovations to the rental suite. The landlords submitted photos as part of their evidence to show the current state of the rental unit which was at least fifty years of age.

The landlords submitted that these renovations were not simply cosmetic, and that based on past experience would take two to three months. They could not provide a definitive timeline, but they required the suite to be completely vacant to do the work. The primary room to be renovated was the bathroom, and of the sixteen suites in the building, four have been completely renovated. The landlords submitted that this is a big project, and required a lot of money. They testified that it would take at least fifteen years to recoup the costs of the renovations. The landlords testified that they believed in quality repairs, and have kept rent very affordable in the building with rent increases not given every year. They said they were willing to spend the money to improve the building.

The landlords submitted that these renovations were a necessity as the building is over fifty years old, and the plumbing needs to be redone. They had offered the tenants another unit with monthly rent at \$875.00 per month, but the tenants declined the offer stating that they could not comply with the new rental agreement. The landlords then rescinded the offer.

The landlords did not obtain any permits for the renovation stating that it was not required to replace the toilet and tub, which would be in the same place. They also

stated that the renovations would take some time as the supplies were being purchased from a wholesaler.

The tenants' agent, EW, testified on their behalf in this hearing, as well as giving his own expert testimony as a property manager for over twenty eight years. The tenants did not believe that the landlords gave them the 2 Month Notice in good faith, and believed that this is a "renoviction" situation. EW testified that in his career as a property manager, he had dealt with the same issue many times, which he stated, in this specific situation, was water leaking from the tenants' tub. He stated that this was a basic and common maintenance issue in apartment buildings, which would be considered minor enough to be repaired in one to two days.

EW stated that he did not see any evidence of rot in the photos provided by the landlords' evidence, and this was a regular maintenance item that could be fixed without requiring the tenants to permanently vacate their suite. He stated that the lack of permits taken or required for this renovation demonstrates how this was not a major renovation that justified a 2 Month Notice. He testified that the landlords have turned off the tenants' water in their bathtub since December 31, 2016. He stated that this was a clear case of a "renoviction" where the tenants were evicted only to be offered another suite at much higher rent.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."

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. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

Although the landlords stated that they had issued the 2 Month Notice in order to renovate the tenants' rental suite, I find that the tenants had raised doubt as to the true intent of the landlords in issuing this notice. The tenants raised the question of the landlords' true intentions to end the tenancy. Their agent provided sworn expert testimony that these types of renovations are considered minor in nature, and do not require the tenants to vacate the suite. The agent also pointed out that the tenants were paying substantially less rent, and were offered a different suite at a higher rate. As the tenants raised doubt as to the landlords' true intentions, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

The landlords did not dispute the fact that the current tenants are paying substantially less rent than other tenants in the building. The landlords also did not provide any permits for any of the proposed renovations. The tenants' expert witness testified that the lack of permits required for this renovation is an indicator of how minor this repair was, and how it should be considered more of a regular maintenance item than a renovation.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony of both parties during the hearing raised questions about the landlords' good faith. The landlords stated in the hearing that they had offered the tenants another suite, at much higher rent. They also could not provide a timeline for the renovations, nor had they obtained any permits or approvals. I accept the expert, sworn testimony of EW, who had been in the business of property management for twenty eight years. EW raised significant doubt about the scope of the project, and whether the landlords required the unit to be unoccupied to make the necessary repairs. I am also concerned about the tenants' undisputed testimony that their water in their bathtub had been shut off since December 31, 2016, thirteen days before this hearing. The landlords did not provide a response or an explanation, but this raises doubt as to the landlords' claim that they believed in quality repairs, and that they wanted to improve the building.

As the good faith intention of the landlords was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that there was significant doubt raised about the landlords' intentions to end this tenancy. The landlords did not provide any specific plans or timelines to support that this

renovation is more than minor in nature, and which would require the tenants to permanently vacate their suite.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, require the tenants to permanently vacate their rental unit for renovations to take place.

Accordingly, I dismiss the landlords' application to obtain an Order of Possession based on the 2 Month Notice.

Conclusion

I dismiss the landlords' application for an Order of Possession. The landlords' 2 Month Notice, dated November 26, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 3, 2017

Residential Tenancy Branch