



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 the tenant's application under the *Residential Tenancy Act* (the "Act") for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2017 (the "2 Month Notice").

The tenant attended the hearing with an advocate. A daughter of the owners of the building attended on behalf of the landlord. The parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions, to respond to the submissions of the other parties, and to call witnesses.

Service of the tenant's application and notice of hearing was not at issue.

Issues

Should the 2 Month Notice be cancelled?

If not, should the landlord be granted an order of possession?

Background and Evidence

No written tenancy agreement was in evidence. It was agreed that the tenancy began in or around 2011, that monthly rent is currently \$480.00 due on the first of each month, and that the tenant paid a security deposit of half a month's rent at the beginning of the tenancy. The current landlord purchased the building, which has four rental suites, about two years ago, and the tenant's security deposit was transferred to the current landlord at that time.

The 2 Month Notice, with an effective date of April 1, 2017 was issued 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 tenant alleges that the landlord does not intend in good faith to renovate. He also says that if the landlord does have a good faith intention to renovate, then the renovations do not require the unit to be vacant and/or the landlord does not have all the necessary approvals and permits in order to renovate.

The landlord's agent testified that there are three other units in the building, which was built around the 1960s. As the tenants in those other unit have left, the landlord has "upgraded" their units. None of the tenants in those units received 2 Month Notices requiring them to vacate so that the upgrades could be carried out. Instead, the upgrades were done as the tenants vacated for other reasons.

The landlord's agent further testified that unit 1 has had "a full reno" whereas unit 2 has had its bathroom fixtures and windows upgrades, and unit 4 has had "some plumbing replaced." She says that the level of "wear and tear" and the amount of money available to the landlord at the time account for the different levels of work done on the different rental units.

The agent stated that the landlord intends to redo the plumbing in the kitchen and the bathroom of the unit in question, and replace the appliances and the sinks, bathtub, and toilet. The drywall around the plumbing will have to be removed and replaced. The agent said that the landlord has decided to also refinish the floors and paint, since it is already in the space doing the other work. The landlord's agent testified that the work will involve dust, dirt, machines and crew and that both kitchen and bathroom will be temporarily unavailable. All of this, according to the landlord, will make the rental unit uninhabitable.

The landlord's agent also described work on the ceiling and/or roof, including the installation of vapour barrier, as involving the removal or some or all of the ceiling. However, as set out below, the agent said that the landlord was not relying on this work as part of the renovation requiring that the unit is vacant.

In response to questions from the tenant's advocate, the landlord's agent testified that the work in the other units has taken between two and three weeks, and that the work in the unit in question will take three weeks.

Also in response to a question from the tenant's advocate, the agent said that the landlord would be willing to rent the renovated unit back to the same tenant, but at "current market rates." The agent stated that another unit in the building that is currently vacant has a rent of \$950.00 but the landlord may be willing to rent it to the applicant tenant for \$850.00.

The landlord's agent testified that the plumbing in the suite in question needs to be redone. There was a flood in an upstairs in or around October of 2016 and there is concern that if the plumbing in this tenant's unit is not replaced there will be additional issues. The plumbing in the subject unit is less accessible than the plumbing in another unit that had had plumbing work done while occupied. At one point in her testimony, again in response to a question, the agent

said that the landlord is waiting until the unit in question is vacant to thoroughly assess the plumbing that is required.

The landlord also included in its evidence a letter from a city building inspector dated February 15, 2017 stating: "Thank you for your inquiry. The proposed work for the kitchen and bathroom . . . does not require a building permit." The agent said that she described the "proposed work" to the building inspector over the phone as "upgrading plumbing" and "upgrading the kitchen and bathroom." She also testified that it is generally accepted in the building industry that "upgrade" means "ripping out" and replacement (of plumbing, appliances, fixtures, cabinets, etc.). She also said that replacing existing plumbing does not require a permit, whereas adding new plumbing does.

Also in evidence from the landlord is a permit for the installation of vapour barrier and a document from the city titled "Required Inspections" dated February 8, 2017. The tenant's advocate argued that because these documents are dated after the 2 Month Notice was issued, the landlord cannot say that it had all necessary permits in place before it issued the 2 Month Notice and that the 2 Month Notice should therefore be cancelled.

The landlord's agent in response said that the landlord is not relying on that roof work, which includes the installation of the vapour barrier, as a reason for ending the tenancy, and that in fact the roof work alone would not require the rental unit to be vacant. It was only decided after the 2 Month Notice was issued and upon further inspection that a vapour barrier should be installed between the drywall and the building's roof. The permit and application for the vapour barrier were only included because she included all of the evidence available to her.

The landlord's agent also said that the landlord will be listing the building for sale sometime this spring. The owner has attempted to sell the building before but has not been able to. According to the agent, renovating the suite at issue may increase the owner's chances of selling the building. The landlord's agent also said that the landlord does not have evidence of a contractor at the ready to carry out the renovations because the building owner is himself a contractor.

The tenant's submissions were limited. The tenant said only that he cannot afford a substantially higher rent or storage for his belongings for a temporary vacancy. However, his mother has offered to have him at her home for a period of up to two or three months in order to allow the landlord to complete the renovations.

Analysis

Section 49(8) of the Act provides that a tenant may dispute a 2 Month Notice by making an application within 15 days after receipt of the notice. The tenant received the 2 Month Notice on January 31, 2017 and filed his application on February 6, 2017. Accordingly, he is within the 15 day time limit.

Section 49(6) allows 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.

The onus is on the landlord to prove the reasons cited in the 2 Month Notice. The landlord must establish that it has all the necessary permits in place and must also establish that the proposed renovation necessarily requires the unit to be vacant.

Additionally, because the tenant alleges that the landlord did not issue the 2 Month Notice in good faith, the landlord must also establish that it truly intends to do what it states on the 2 Month Notice and that it does not have an ulterior motive that negates the honesty of intention: Residential Tenancy Policy Guideline #2 ("Good Faith Requirement When Ending a Tenancy").

Based on the above I find that the landlord has not submitted sufficient evidence to establish that the rental unit must necessarily be vacant for the renovations in question to be done. The landlord has not shown that the renovations must be done all at once, rather than in a staged process. There is no evidence from a plumber as to the amount of time that the plumbing work may take, the amount of time that water will be entirely unavailable in the unit, why the bathroom and the kitchen cannot be renovated one after the other so as to minimize the period during which the unit must be vacant. There is no evidence from a contractor as to the work required. The landlord submitted only the letter from the building inspector in support of the 2 Month Notice. No witnesses were called and there was no documentation of the work done in the other thoroughly renovated unit.

Additionally, the tenant is willing to temporarily vacate the rental unit. The landlord's agent has testified that the renovations will take three weeks. If the landlord carries out the work in stages, having the tenant vacate for even that length of time will not necessarily be required.

The landlord's agent also stated that the extent of the plumbing to be done is not yet known, as the landlord is waiting until the rental unit in question is vacant to fully assess. This suggests that the plumbing, which was not wholly replaced in other units, may not actually require complete replacing as the landlord says it does. This throws some doubt on the landlord's good faith.

Nor has the landlord adequately explained the significantly different levels of work required in the different suites. It is not clear why this tenant's unit requires a complete removal and replacement of both the kitchen and bathroom and that the floors be refinished, when another unit has simply had new bathroom fixtures and windows and another has had "some" plumbing work.

Additionally, the landlord has not demonstrated that it does not have another competing motivation that undermines the honesty of intention. In fact, the agent has testified that the

landlord intends to sell the building and that the renovation of the suite in question may increase the likelihood of a sale. It is also clear that the renovation will allow the landlord to substantially raise the rent. I therefore find that the landlord has other motives, including substantially increasing the rent and selling the building, that negate its good faith in the circumstances. The Act contains comprehensive provisions regulating rent increases. Allowing the landlord to terminate this tenancy in the circumstances would be allowing it to circumvent those provisions.

Based on the considerations outlined above, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The 2 Month Notice is cancelled and of no force or effect. This tenancy continues until it is 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 s.n 9.1(1) of the Act.

Dated: March 10, 2017

Residential Tenancy Branch