



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEADWATER PROJECTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNL FF

Introduction

This hearing dealt with seven joined Applications for Dispute Resolution (the “Applications”) under the *Residential Tenancy Act* (the “Act”) filed by tenants of seven rental units namely, 103, 207, 304, 401, 402, 407 and 408, all at the same street address. The tenants of all seven rental units have applied to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated January 16, 2017 (the “2 Month Notice”) and to recover the cost of the filing fee.

The tenants of units 103, 401 and 408, legal counsel for the tenant in Unit 408 (the “counsel”) and an agent for the landlord (the “agent”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Two landlord witnesses were also called and provided affirmed testimony and the opportunity was provided for all parties to ask questions of both witnesses. The tenants of units 207, 304, 402 and 407 did not attend the hearing.

None of the parties raised any concerns regarding the service of documentary evidence. The hearing lasted a total of 151 minutes.

Preliminary and Procedural Matter

At the outset of the hearing, counsel requested to have the hearing adjourned to provide time for counsel to prepare as he had only been retained two days prior to the hearing on March 8, 2017. Counsel’s request was denied as I have considered the criteria for adjournments in the Residential Tenancy Branch Rules of Procedure and I find that the tenant who retained counsel submitted his Application on February 2, 2017 and waited over one month before retaining legal counsel on March 8, 2017 and that such a delay is both unreasonable and not the fault of the landlord. In addition, I find there would be a greater prejudice to the landlord to adjourn this matter as this matter relates to a notice to end tenancy that contains an effective vacancy date that is within three weeks of the date of this hearing. As a result of the above, the hearing proceeded without an adjournment being granted.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

The tenants confirmed that they were served with the 2 Month Notice on their door on January 18, 2017. All of the tenants disputed the 2 Month Notice within the 15 day timeline as provided under section 49 of the *Act*.

The 2 Month Notice states the cause as “The landlord has all 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 landlord submitted a building permit, the number of which has been included on the cover page of this decision for ease of reference. The landlord testified on several occasions during the hearing that “we have all the required permits” and used the term permits in the plural, not the singular. The tenants and counsel affirmed that the building permit submitted in evidence indicates in several areas that other permits and work details are required to be obtained. Three examples are:

“...A plumbing permit is required for alterations and additions to the plumbing...”

...

“...A Qualified person under the Electrical Safety Act must be named on the Electrical Permit...”

...

“...Any electrical work done will require details to be provided and permits obtained...”

[Reproduced as written]

The agent testified on several occasions throughout the hearing that this building permit is all that is required for the Residential Tenancy Branch. The tenants and counsel did not agree with the position of the agent and presented a primary argument that the landlord did not comply with the reason stated on the 2 Month Notice as the landlord did not have all the necessary permits and approvals as the documentary evidence supports that additional permits and approvals of electrical work for example are still required.

Regarding the timeframe of the renovations to the rental building which contains 32 rental units, the landlord writes in their summary of the work required submitted in evidence the following:

“...The project will carry out upwards of 6 months from start to finish, and involves the shut off of vital services including heat, hot water, and electricity and extensive demolition of the suites including all fixtures and finishes, door, walls and insulation...”

[Reproduced as written]

During the hearing, the tenants and counsel both pointed out that the documentary evidence contradicted the agent's testimony that the work would now take “at least six months”. The agent stated that just a few days before the hearing she received new information that changed the timeframe to at least six months but confirmed that that information was not submitted in evidence to the tenants.

The agent called and presented two witnesses, both of which affirmed that additional permits will be required for the project. The landlord presented a secondary legal argument that even if the renovations require the rental unit to be vacant, the tenancy did not need to be terminated if a tenant was willing to move out of the rental unit during the period of time of the renovations and then move back in. Counsel stated that the *Act* did not speak to a specific timeframe of six months or other timeline in terms of the length of the renovation. Counsel cited the *Barry and Kloet V. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 decision which was submitted in evidence in support of this position.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The 2 Month Notice dated January 16, 2017 was received by all three tenants on January 18, 2017 and has an effective vacancy date of March 31, 2017. There is no dispute that the tenants disputed the 2 Month Notice within the fifteen day timeline provided for under section 49 of the *Act*. When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have carefully reviewed the building permit submitted in evidence by the landlord and I find that it does not meet the requirements of section 49(6)(b) of the *Act*. Therefore, I find that the landlord has provided insufficient evidence to support that the one permit submitted meets the requirements of section 49(6)(b) of the *Act* which states:

49(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

[My emphasis added]

While the agent testified that one permit is all that is required to comply with the *Act*, I find the landlord has provided insufficient evidence to support that claim. At the very least, I would expect the other permits referred to in the permit be provided in evidence to consider that all necessary permits and approvals required by law had been obtained regarding the renovations to the rental building of 32 rental units. Therefore, I cancel the 2 Month Notice due to insufficient evidence.

As I have cancelled the 2 Month Notice, I find it is not necessary to consider counsel's secondary argument noted above.

For those tenants who did not attend the hearing, section 55(1) of the *Act* states the following:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit **if**

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*,
and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[my emphasis added]

Given the above, and the fact that I have cancelled the 2 Month Notice due to insufficient evidence, I do not grant the landlord an order of possession for any of the seven rental units that form a part of this joiner application.

I order these tenancies to continue until ended in accordance with the *Act*.

I grant the recovery of the cost of the filing fee in the amount in the amount of **\$100.00** for four of the seven tenants joined in this application before me who paid a filing fee and exclude the three tenants who had their filing fee waived. The tenants in units 103, 401, 402 and 408 are entitled to a one-time rent reduction of \$100.00 in full satisfaction of the cost of the filing fee, pursuant to section 72 of the *Act*.

Conclusion

The 2 Month Notice issued by the landlord is cancelled due to insufficient evidence.

I order the tenancy to continue for the tenants of units 103, 207, 304, 401, 402, 407 and 408 until ended in accordance with the *Act*.

I grant a one-time rent reduction in the amount of \$100.00 in full satisfaction of the cost of the filing fee pursuant to section 72 of the *Act* for the tenants in units 103, 401, 402 and 408.

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: March 13, 2017

Residential Tenancy Branch