



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNL, OLC, FF

For the landlord – OPL, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for to cancel a Two Month Notice to End Tenancy for landlords use of the property; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for landlords use of the property; and to recover the filing fee from the tenant for the cost of this application.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the Two Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

- Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy originally started on November 15, 2011 with two tenants. The tenancy was renewed on May 01, 2012 with this tenant as the sole tenant. Rent started at \$900.00 per month and has increased over the course of the tenancy to \$961.00 per month. Rent is due on the 1st of each month.

The landlord testified that the tenant made some complaints about the condition of the rental unit and described it as unlivable. The landlord gave the tenant written Notice to come and inspect the unit and did so in March 2017. The landlord found that the unit was in need of an extensive renovation. The unit was built in 1975 and the landlord purchased it in 1997. The only work the landlord has done to the unit in the last 20 years other than regular maintenance and exterior improvements was to replace the carpets 10 years ago.

The landlord went to the city to enquire about building permits or approvals and was told that most of the work was cosmetic and that this did not require permits or approvals. The landlord believes that all the plumbing and electrical work is currently up to code but if any work of this nature is found to be defective then the contractors doing the renovations will obtain permits from the City at that time.

The landlord served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) on March 30, 2017 in person. The Notice has an effective date of June 01, 2017 and provides the following reason to end the tenancy:

The landlord has all necessary permits or 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 testified that the interior of the unit requires a full renovation that will require the rental unit to be vacant. The work to be completed includes, but is not limited to, the removal and replacement of all flooring and carpets; the removal and replacement of all kitchen and bathroom cabinets; the removal and replacement of all counter tops; the removal and replacement of the tub; the removal and replacement of the toilet and sinks in the bathroom and kitchen; replacing any minor plumbing and electrical fixtures; the entire unit will need to be painted including the closets and ceilings; doors will be replaced where required; windows will be repaired and any other updates required will be addressed. The water and other services will need to be disconnected for this work to take place.

The landlord's agent testified that the landlord did a similar renovation on another unit in this triplex which took four to six months. This is based on the availability of the contractors. The landlord has spoken to contractors and due to the extensive work required they will not undertake to do the work unless the unit is vacant. They are not prepared to work around the tenant, her family or her belongings due to safety issues and the liability of contractors for the tenant's belongings. The extent of the work would also be very disruptive to the tenant and her family and the landlord therefore seeks an Order of Possession so contractors can work in the unit without hindrance or conditions. The landlord agreed at the hearing that the tenant can remain in the unit until June 30, 2017 to give her more time to find alternative accommodation.

The tenant's advocate asked the landlord which of the work would relate to any contractors liability or insurance. The landlord's agent responded all of the work. The unit will be stripped, there will be no toilets or sinks or tub, there will be no services to the unit, there will be safety issues with the contractors tools and supplies left in the unit and there is a liability the contractors do not want regarding the tenants belongings. The tenant's advocate asked in the list of work provided are the carpets and linoleum being replaced and the bathroom sink. The landlord's agent responded yes.

The tenant's advocate submits that usually repairs can be done in sections such as the painting and flooring, the plumbing, the kitchen and bathroom. The tenant is willing to

work with the contractors and when things like the tub and sinks are removed the tenant is willing to stay elsewhere. The tenant will accommodate each contractor's requests when they do the repairs. Other repairs are also required such as a light fixture and the dishwasher.

The tenant would agree to put her belongings into storage and the landlord could schedule the work and the tenant could stay with friends for short periods of time. The tenant and landlord have had a good relationship and the tenant hopes they can work this out so she can stay in her home. The tenant seeks therefore to have the Notice cancelled and for the tenancy to continue.

The landlord asked the tenant's advocate when the tenant says she will move out for short periods is this days, weeks or months. The tenant's advocate responded that it would depend on the work being completed at the time and the cooperation between the tenant, the landlord and contractors. The landlord's agent asked if the renovations are done in pieces it will be more costly to the landlord and take much longer to complete. If the unit is vacant the contractors can work freely and if the tenant was living there the landlord would be required to give her Notice of entry. The tenant's advocate responded that the painting and flooring would be done last. Any other work the tenant is willing to accept notices by telephone on a common sense basis for example if the contractors want to come to do the bathroom the tenant can be given notice the day before. The landlord's agent asked if new fixtures and fitting could not be obtained for six weeks how then would that work with the tenant living in a half finished unit. The tenant's advocate responded that there should be a schedule of work between the landlord and contractor's. The landlord's agent asked the tenant if she works shift work and would they have to adjust the notice to allow for the tenant's shifts. The tenant responded yes sometimes she works in the morning and sometimes the evening but she would say no to any extra shifts.

The landlord's agent asked if the contractors got the fixtures and wanted to get into the unit to install them would they have to wait for the landlord to give the tenant notice. The tenant's advocate responded that it would be hard to clarify a time frame but believes

little notice would be required for the family to remove their belongings and to move out to accommodate any work. The landlord's agent asked about the safety issues when the unit would effectively become a construction site. The tenant's advocate responded that contractors have to work around other families who live in their own homes so where is the liability.

The landlord's agent testified that she does not believe that a one day limit for the tenant to stay elsewhere is realistic and the contractors would not be doing individual jobs when they have to renovate the entire unit. One contractor may do several jobs or there may be several tradesmen in at the same time.

The landlord testified that when she renovated the other unit in the triplex it took nine months to finish the work as contractors would not show up and the landlord was forever phoning them. They would bring the supplies and go off to another job. This could extend the time for this renovation.

A discussion took place regarding the rent increases imposed since 2013. The tenant's advocate agreed that the landlord imposed an illegal rent increase in 2015. The rent had been increased previously to \$934.00. In 2015 the allowable increase was 2.5 percent. The amount the rent should have increased was \$23.35 not \$31.00. This leaves an overpayment of \$7.65 for the last 14 months.

The tenant's advocate submitted that the landlord also gave another rent increase to the tenant in 2016 but accepted that the landlord withdrew this increase as it was incorrect.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Having considered the scope of the work required in the unit, the extent of the renovation and the tenant's family, I find it is unreasonable of the tenant to think she could continue to live in this unit without water or other services such as electricity while this work was being completed and unrealistic to think that contractors would keep the unit safe for her children. Further to this, I find the landlord is required to provide a tenant with 24 hours written notice and even if the tenant agreed to forgo this requirement under the *Act* the landlord would still have to give the tenant notice that contractors were coming frequently to allow the work to flow in this unit.

Contractors do not like to work in an environment where they have to pack up their tools or other dangerous items each day only to unpack them again the following day. In considering the scope of work it is clear that this unit will become a job site and therefore will not be safe for the tenant or her family to live in. Furthermore, there is the issue of the tenant's belongings and neither the landlord nor the contractors should have the responsibility to the tenant's belongings when the scope of work is so extensive, effecting most areas of the unit. I accept that the tenant agreed to put her belongings into storage but if she did so she would not then have anything in which to live with if she remained in the unit.

Consequently, I find I am satisfied that the level of work required in the unit does require the rental unit to be vacant. I therefore uphold the Notice and issue the landlord with an Order of Possession pursuant to s. 55 of the *Act*, effective on June 30, 2017.

The tenant's application to cancel the Notice is therefore dismissed.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; the tenant's advocate submitted that this is in regard to repairs and the additional rent increase. In the matter of repairs, the landlord is addressing any repairs with the renovation of this rental unit.

With regard to the rent increase, I have considered the rent increase imposed on October 01, 2013 and find that this increased the rent from \$900.00 to \$934.00. This increase is less than the amount permitted under the *Act*.

With regard to the increase on April 01, 2016 from \$934.00 to \$961.00; the percentage of increase in 2016 was 2.9 percent. Therefore the most the landlord could increase the rent would have been \$27.08. The rent was actually increased by \$27.00 and there was an error on the rent increase notice when it stated the rent was increased by \$31.00. Consequently, the landlord increased the rent under the permitted amount. There was some confusion regarding these figures at the hearing as the tenant stated the rent had increased in 2015 when the rent increase notice shows it went up in 2016. The tenant's current rent therefore remains the same as the landlord withdrew her rent increase notice for 2017.

The tenant was entitled to withhold her rent for May, 2017, in accordance with s. 51 of the *Act* in compensation for the Two Month Notice. The tenant will be required to pay rent for June, 2017.

As the landlord's application has been successful the landlord is entitled to recover the filing fee of \$100.00 from the tenant and may deduct that amount from the tenant's security deposit of \$450.00, leaving a balance of \$350.00 to be dealt with at the end of the tenancy in accordance with s. 38 of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord's application is allowed. The landlord has been issued an Order of Possession effective **at 1.00 p.m. on June 30, 2017** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the

rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 24, 2017

Residential Tenancy Branch