Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for landlords' own use (the 2 Month Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlords' agent, LM ('landlords'), testified on behalf of the landlord as their agent, and was given full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with the tenant's application and evidence. The landlords did not submit written evidence for this hearing.

The tenant confirmed receipt of the 2 Month Notice dated May 8, 2017. Accordingly, I find that the 2 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

The tenant indicated in the hearing that he was withdrawing the monetary portion of his application at this time.

Preliminary Issue – Landlords' Application to Adjourn Hearing

At the outset of the hearing, the landlords requested an adjournment. The landlords cited the following reason for the adjournment application. The landlords did not submit any written

evidence for this hearing, and wished to do so. The landlords wanted to obtain a copy of the engineer's report to support their testimony for the hearing.

The tenant opposed the landlords' adjournment request, stating that they were ready to proceed, and the landlords had ample time to prepare for the hearing. The tenant felt it would be prejudicial to them to delay the matter as this dispute pertains to whether this tenancy was to continue or not past the effective date of the 2 Month Notice: July 31, 2017.

In considering this request for an adjournment, I must take into consideration the criteria established in Rule 7.9 of the *Rules,* which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

Based on the submissions of both parties I find that an adjournment of this matter would be prejudicial to the tenant. This is a time sensitive matter which pertains to whether this tenancy may continue past the effective date of the 2 Month Notice. I find that the tenant has a right to a timely resolution of their application, and I find that an adjournment would only delay the resolution of this matter, which would be prejudicial to the tenant who filed his application on May 8, 2017, immediately after receiving the 2 Month Notice. The tenant submitted his evidence on time. I find that ample time was given to both parties to prepare for this hearing, and the landlords did not provide a compelling reason for why they were not prepared to proceed, or why they did not submit any written evidence in time for the scheduled hearing. As the landlords bear the burden of proof after issuing a 2 Month Notice, they need to be prepared at the time of their issuance of such a notice to demonstrate that the tenancy needs to end for the purposes cited in their 2 Month Notice. I find that an adjournment is not required to provide a fair opportunity for both parties to be heard. I am not satisfied that an adjournment is necessary, and I advised both parties that I would proceed with the hearing as scheduled.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

The landlords testified that this month-to-month tenancy began in April 2009. Monthly rent in the current amount of $500.00 is payable on the first day each month. The landlords still hold a security deposit of $250.00. The tenant continues to reside in the rental unit.

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

- The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

RC, the landlords' witness, testified in this hearing. RC testified that he was the contractor for the landlords with over 40 years' experience in the construction industry. RC provided some background on why the landlords issued the 2 Month Notice. RC testified that the building was built in 1912, and was purchased by the landlords about two and half years ago. The building was extremely neglected, and in need of repairs and updates. RC referred specifically to a structural issue that was discovered upon further investigation after the courtyard roof was discovered to be leaking. RC testified that the building was a "post and beam construction", and that a beam was decaying, which was a crucial structural component of the building. RC testified that this repair was required for safety reasons, and that a structural engineer was hired to submit drawings and a report that were required to obtain a permit necessary for the work to be commenced. The landlords were able to obtain a permit, which was included in the tenant's evidence. The building permit, dated November 29, 2016, and revised on May 4, 2017, reads "Scope of work to include shoring in units ***, ***, and *** to facilitate structural beam replacement in basement and main floor. Revision to add structural repairs – adding B1/B2 ltr and Structural Drawings". Project Description: Interior alterations to provide flood damage repairs to unit ***, *** and the commercial unit below and portion of the basement in the existing commercial/residential Heritage Building. Scope of work to include Structural replacement of beam and column per structural drawings include shoring in units: ***, ****, and *** to facilitate structural beam replacement in basement and main floor." A copy of this permit was provided in the tenant's evidence.

The landlords testified that the units below and above the tenant were given 2 Month Notices as well, and only these three units out of thirty-five needed to be vacated for the purpose of this work. The landlords testified that efforts were made to accommodate the tenant, but no other units were available for the tenant to occupy, and that a settlement was also discussed with him as well as the other two units, but the tenant would not agree to it. The landlords testified that the vacancy was required for the work to commence, and other necessary electrical and plumbing repairs were pending as this repair had to be completed first.

The tenant's agent LM confirmed with the landlord's witness that he was not an engineer, but a contractor. He also confirmed that the landlord had actually owned the building since 1993, as it was owned by the same corporate owners, under different management. LM testified that the owners had many years to address the issue, but questioned why the landlords waited until now. LM maintained that the tenant was paying below market rent, and that this 2 Month Notice was issued for the purposes of a "renoviction". The tenant submitted written statements from other tenants in support of his claim.

The tenant testified that no Worksafe notices were ever issued in regards to the safety of the building. The tenant questioned the landlords' claim that his unit needed to be vacated for the purpose of the construction, and noted that the landlords did not submit any written evidence such as reports or estimates to support their testimony.

One of the letters the tenant had submitted in evidence, dated May 18, 2016, was from JS, a "woodworker and carpenter". The tenant testified that JS submitted his statement as an expert with substantial experience repairing buildings. JS wrote, in his letter, that he had "spent several years repairing buildings just like this one…some of the most sought after and experienced outfits in heritage restoration who have been responsible for 60% of all heritage restorations…nobody needs to be evicted for this standard and easily accomplished repair".

The tenant also testified that the landlords' witness was an employee of the landlords, and therefore was not giving independent, expert testimony. The tenant testified that the contractor was part of the landlords' strategic "renoviction" plan. The tenant testified that the average rent in the building ranged from $370.00 to $625.00 per month, while the average rent was $1,013.00 for similar units in the same city.

The landlords' witness responded that Worksafe approval was not a requirement of the repairs, but that an engineer's report was commissioned and completed. He testified that although the work was estimated to take two to three months if things go smoothly, the timeline could be extended to four to six months. The landlords disputed the tenant's allegation of the "renoviction" plan, stating that only three units were given the 2 Month Notices in this thirty five unit building with all units paying substantially below market rent. The landlords testified that they had tried to resolve this matter with the tenant, but the tenant refused. Lastly, the landlords testified that the necessary permit was obtained, and that they were prepared to undertake the renovations referred to in the 2 Month Notice.

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."*

The tenant raised the question of the landlords' true intentions to end the tenancy, as the tenant is paying substantially below market rent. As the tenant 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 tenant is paying substantially less rent than other tenants in the city. I accept the testimony of the landlords that only three units were asked to vacate, and the landlords had made efforts to limit the impact to these three tenants in this building by offering a monetary settlement to the three units affected as no other empty suites were available in the building, stating that that the timeline for this project may take longer than expected.

I find that the tenant did raise doubt, though, about the landlords' true intentions as the landlords did not provide an explanation for why the landlord was not able to provide alternative, temporary accommodation elsewhere, especially considering this is the only remaining tenant affected, and the repair was estimated to take only a few months.

Although the landlords were able to obtain a permit for the repairs, the landlords did not submit any supporting, written evidence for this hearing despite having ample time to do so. The landlords did not provide any engineer's reports, drawings, plans, or time lines. In the absence of these things, and in light of the fact that the tenant raised doubt as to the landlords' intentions in ending this tenancy, I find that the landlords did not meet their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the landlords have not provided sufficient evidence to demonstrate that the repairs would be of such a magnitude as to necessitate the tenant's removal from the rental unit for such an extended period of time that the tenancy could not continue.

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 tenant to vacate this specific rental unit in order to undertake necessary structural repairs.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. This tenancy is to continue until ended in accordance with the *Act.*

Conclusion

I allow the tenant's application to cancel the landlords' 2 Month Notice. This tenancy is to continue as per the *Act*.

The tenant's application for a monetary award is withdrawn.

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: June 29, 2017

Residential Tenancy Branch