



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAM WAH TONG HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

On April 26, 2017, the Tenant submitted an Application for Dispute Resolution asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property (the Two Month Notice) and seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they have received each other's evidence. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Matters

The Tenant applied for Dispute Resolution after receiving a 2 Month Notice To End Tenancy For Landlord's Use Of Property. The Tenant is seeking to cancel the 2 Month Notice and is also requesting monetary compensation for damage; loss of quiet enjoyment; and harassment.

An Arbitrator has the discretion to dismiss unrelated claims with or without leave to reapply. Since the primary issue to determine in this hearing is whether or not the tenancy is ending, I dismiss the Tenant's monetary claims with leave to reapply.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy be cancelled?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began in 1995, and is a month to month tenancy. Rent in the amount of \$812.13 is to be paid on the first day of each month.

The Landlord testified that the rental property is over 100 years old and has never had any major work done on it. He testified that it is difficult to maintain the property because the Tenants pay low rent. He testified that there have been recent issues with maintaining the building such as a broken boiler that took two weeks to repair. He testified that the Landlords decided to fix up the units, and spruce up the building one or two units at a time.

The Landlord issued the Tenant a 2 Month Notice to End tenancy for Landlord's Use of Property dated April 24, 2017. The reason for ending the tenancy in the Notice states:

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.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Landlord testified that he is currently renovating three units. He testified that they are replacing kitchen cabinets; flooring; and some plumbing. He testified that the units need to be empty to perform the work. He testified that it takes approximately 1 Month to perform the renovation.

The Landlord testified that all the units are receiving the same renovation:

- new laminate and linoleum flooring
- new kitchen cabinets
- double sinks
- new bathroom vanity
- new toilet

- new faucet

The Tenant's submitted that she feels this is a targeted reno-viction. She testified that the Landlord is evicting her because she is displeased with the low amount of compensation offered by the Landlord for the loss of heat when the boiler broke down.

The Tenant submitted that the Landlord has not applied for permits and no permits have been issued from the City. The Tenant provided a copy of a letter dated April 26, 2017 from the City Development, Buildings and Licensing that indicates no applications have been submitted and no permits have been issued for the rental property.

The Tenant submitted that the renovations are cosmetic and do not require her to move out of the rental unit. She submitted that she has taken care of her unit and it is in good shape. She submitted that she does not want the renovation.

In response to the Tenant's testimony, the Landlord testified that the city building inspector attended the property after the Tenant made inquiries about permits, and an inspection was conducted. The Landlord testified that because there is no major plumbing or structural changes, a permit is not required.

Analysis

Residential Tenancy Branch Policy Guideline #2 Good Faith Requirement when ending a Tenancy provides information regarding good faith when a Landlord ends a tenancy for Landlord's use of property.

The Guideline states that the *Act* allows a Landlord to end a tenancy if the Landlord intends in good faith to substantially renovate or demolish the rental unit, with all required permits and approvals.

A claim of good faith requires honesty of intention with no ulterior motive. When evidence is presented that raises the question of whether the Landlord had another motive or purpose, an Arbitrator may consider motive in deciding 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 do not have an ulterior motive for ending the tenancy.

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

The Notice states that 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. The testimony of the Landlord that the city attended the property to inspect the renovation leads me to find that the Landlord did not make an application to the city for permits prior to issuing the 2 Month Notice to End Tenancy and starting the renovation. This finding is supported by the letter from the city dated April 26, 2017, that indicates no applications were submitted and no permits were issued. The validity of the 2 Month Notice does not turn on this finding.

The Tenant submitted that the renovations are cosmetic and do not require her to move out of the rental unit, and that she is being targeted.

I do not find that the Tenant was targeted by the Landlord for eviction. There is insufficient evidence from the Tenant to convince me that the Landlord is ending her tenancy due to a dispute over compensation for loss of a service. I accept the Landlords testimony that he is renovating the rental units to upgrade the property.

The Landlord testified that the renovations require the unit to be vacant but did not elaborate on the reasons why the rental unit must be vacant. The Landlord did not provide any documentary or photographic evidence from himself, or trades people performing the work that the rental unit must be vacant in order to perform the work. The Landlord testified that there are no major plumbing or structural change renovations.

While I accept the Landlord's testimony that he is renovating the rental units, I find there is there is insufficient evidence from the Landlord to establish that the repairs are substantial enough to require the rental unit to be vacant.

I find that the Landlord provided insufficient evidence to support the reason to end the tenancy.

I cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated April 24, 2017.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to deduct the \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 24, 2017, is granted. The 2 Month Notice is cancelled.

The tenancy will continue until 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: June 05, 2017

Residential Tenancy Branch