



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated and received April 27, 2017.

The Notice claims that the landlord has all the necessary permits and approvals required by law to demolish the rental unit or to renovate or repair it in a manner that requires the rental unit to be vacant.

Section 49 of the *Residential Tenancy Act* lists this ground as a lawful reason for a landlord to end a tenancy.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. The landlord did not file material.

Issue(s) to be Decided

Does the evidence presented at hearing show that landlord has lawful grounds to end this tenancy?

Background and Evidence

The rental unit is a two bedroom house. The tenancy started in April 2017. The monthly rent is \$750.00. There is no written tenancy agreement.

The landlord testifies that she intends to remove ceiling panels and carry out drywall work as well as recover the floor in laminate flooring. Her husband and son-in-law will be doing the work in their spare time. She might also change the counter tops.

Analysis

The tenant was not called on to respond.

It is an essential requirement that the landlord establish that for the renovation work to be done vacant possession of the rental unit is required.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, a case involving the anticipated renovation of an apartment unit, Mr. Justice Williamson determined:

[20] The third requirement, namely, that the renovations are to be undertaken in a manner that requires the rental unit to be vacant, has two dimensions to it.

[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use “vacant” to mean “empty”. Thus, the arbitrator must determine whether “as a practical matter” the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in *Allman*. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

[23] This interpretation of s. 49(6) is consistent with the instruction in *Abrahams and Henricks* to resolve ambiguities in drafting in favour of the benefited group, in this case, tenants. Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a “loophole” for landlords.

The renovations the landlord describes are common renovations. No homeowner carrying out this type of work would consider moving out of his or her home while the work was being done.

The landlord has failed to establish the grounds for the Notice and it is hereby canceled.

Conclusion

The tenant's application is allowed. The Notice is cancelled.

The tenant is entitled to recover the \$100.00 filing fee for this application. I authorize her to reduce her next rent due by \$100.00, in full satisfaction of the fee.

The parties agreed that the tenant will pay rent by providing the landlord with series of twelve post dated cheques

This decision was rendered orally at hearing 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: June 26, 2017

Residential Tenancy Branch