



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the “Act”) for cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated April 20, 2017 (the “2 Month Notice”).

Both of the tenants and the landlord attended the hearing. The hearing process was explained and the parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submissions of the other parties. Neither party called any witnesses.

Service of the tenants’ application and notice of hearing was not at issue.

As the burden of establishing the reasons for ending the tenancy was on the landlord, the landlord was the first to present his case. The tenant then had the opportunity to respond. At the end of the scheduled hearing, the tenant had not yet completed his submissions, and the parties were advised that the matter could be continued at a later date. The landlord expressed concern with potential delay and with the fact that the tenant making the submissions in response had been “allowed to ramble on.” As a result the landlord was given an opportunity to respond to the tenants’ submissions to that point. I then advised the parties that I was in a position to make a decision without hearing further from the tenants, and the tenants were content with that.

Issues

Should the 2 Month Notice be cancelled?

Background and Evidence

The written tenancy agreement was not in evidence. It was agreed that the tenancy began in or around the spring of 2012, that monthly rent is currently \$1,410.00 due on the first of each month, and that the tenants paid a security deposit of half a month’s rent at the beginning of the tenancy. It was further agreed that the current landlord has recently purchased the rental unit, and the tenants’ security deposit was transferred to him at that time.

Landlord’s submissions

The 2 Month Notice, with an effective date of June 30, 2017 was issued for the following reason:

- *The landlord has all the 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 that the proposed renovation work is so extensive that it will require the unit to be vacant. He advised that there is one other unit in the building, and that the tenants in that other unit have not disputed that the renovations will require that their rental unit be vacant and will be vacating at the end of June.

The landlord testified that the renovations will require “ripping out” the bathroom and kitchen fixtures, so that there will be no toilet, no bathtub, and no sinks. The landlord further stated that the unit’s hardwood floors will all be refinished and that all of the windows in the rental unit will be removed and replaced.

According to the landlord, the renovations do not require permits. The May 13 contractor quote detailed below also states: “As no structural changes are being made and no plumbing or electrical fixtures are being moved, permit is not required from the City”

An email exchange between the parties dated May 1, 2017 was in evidence. In that exchange one of the tenants writes that he has been advised that since the renovations “are voluntary (i.e. not the result of major water damage or something) and are mostly cosmetic, that if we are willing and able to live in the unit while the construction is ongoing then we have a right to do so.” The landlord responds that the tenants are mistaken and then states: “The renovations are extensive. I will be ripping and resanding the floors, redoing bathrooms and kitchens replacing windows etc. As I will be doing most of the work myself it’s going to be lengthy and dirty.”
[Reproduced as written]

The landlord relied heavily on a letter from a contractor dated May 13, 2017. That letter states that it is written based on “site visit, consultation, and floor layouts submitted by owner.” It ends with the following: “This quotation to be an addendum to Renovation Contract between parties. Thank you for considering [name of company] for your renovation project.”

Under the heading “renovation scope” is the following list:

- Retile entrances, bathrooms and kitchens in unit’s A & B
- Re-sand and repair existing hard wood floors
- Remove existing brick flooring in front of chimney and repair and replace with matching flooring
- Replace bathtubs, toilets and bathroom cabinets
- Replace kitchen cabinets, counters and sinks

Replace all light fixtures
Repaint both units entirely

The May 13 letter sets out the work to be done in a series of steps totaling 44 “scheduled days” and then states: “Some items will overlap and some items may be delayed. Allowance of 8 weeks is required for complete finish.” Approximately seven days total are scheduled for sanding and refinishing the wood floors. Approximately seven days total are allotted to the removal of all cabinetry (and flooring, trim, fixtures, and doors) and for the reinstallation of cabinets and vanities.

That letter also states:

Owner requested the work to be completed in stages and partially throughout each unit, allowing it to be occupied during construction. [Company] cannot complete work thoroughly and effectively whilst occupied, as the construction process first involves removal of all items and fixtures and then trades scheduled to complete the work.

The letter contains a qualifying note:

Assumption is made into the condition of the current wood floor. Verification needed on wood floor underneath carpet in areas described in walk through and plans, that they can be sanded and finished. Not included are any major repairs of current floor and/or replacement of any boards. Upon on exposure of floors, determination will be made with owner of scope of work and adjustments to this quote.

[Above quotations all reproduced as written]

The May 13 letter quotes \$96,450.00 for the work on both units.

The landlord also included a quote dated March 24, 2017 from a window company for the supply and installation of windows for both units, and receipts for work that has already been done on the outside of the building and for deposits on materials for one or both of the units (countertops and murphy beds). The landlord submitted that these receipts establish that he truly intends to renovate. He also submitted that that the amount of money that will be spending (approximately \$50,000 per unit) evidences just how substantial the work will be.

Also in evidence from the landlord were portions of a building inspection carried out March 23, 2017. The landlord submitted these materials in order to establish that certain work needs to be done. There is for example a photo of a single pane window with notations about leaking. Another photograph shows flooring underneath a section where the bricks have been removed from the former hearth. The landlord cites this photo as an example of “floor needing repair in the living room.”

Tenants' submissions

The tenants argue that the renovations do not require the unit to be vacant. One of the tenants stated that he has been involved in construction for approximately 10 years and that the May 13 schedule makes no allowance for multiple trades working at the same time, and that it is reasonable to assume there would be some coordination of trades. In the tenants' submission, the anticipated renovations would not actually require the eight weeks contemplated by the May 13 letter if the work was coordinated. The tenants also observe that the May 13 schedule deals with work to be done on both rental units.

The tenants also claim that the May 13 quote inflates the time required for certain things. They say that the use of quick set material would allow for tiles to be installed and walked on after only two hours. The tenant with a contracting background stated that in his experience cabinetry can be torn out and reinstalled in one day, as can countertops. That tenant also submitted that the windows will be removed and installed from outside of the rental unit and that they have had windows removed and reinstalled in this manner over the course of their tenancy. He testified as well that he has worked renovations where the toilet has been replaced at the close of the work day, and that bathtubs are usually available for approximately three days when they are replaced.

The tenant further stated that they were away on holiday while their building was being shown to prospective purchasers, but they were kept apprised of the showings by the realtor. They stated that when they returned the carpet was lifted in two areas, likely so that the state of the flooring underneath could be investigated. The tenants say that there is no hardwood under the two sections of carpet that have been lifted or under a third section in the closet that they inspected themselves. They say that the surface under the carpets is painted plywood, that the landlord must know this as he has referred to the white paint, and that the time estimates for refinishing the hardwood flooring are not accurate because there is no hardwood to refinish.

They argue that the landlord's initial statement on May 1 that he intends to do most of the work himself is inconsistent with the quote from the contracting company dated May 13. They argue that the landlord's claim that he would be doing most of the work himself was meant to make the renovations appear more lengthy than necessary. They also argue that the fact that the landlord changed his mind between May 1 and May 13 about who would be performing the majority of the work makes the May 13 quote less credible. The landlord in response says that he is allowed to change his mind about the work that he will be carrying out himself.

The tenants included an email dated April 14, 2017 from the landlord in their evidence. There the landlord asks the tenants whether they would be interested in moving back into their unit after it has been redone, with an increased monthly rent of \$2,400.00. This email begins with some links to other rental units for the tenants to consider, which the landlord advises that he also owns.

The tenants also observe that landlord did not mention replacing cabinetry in the April 14 email, although he outlined the work to be done at that time. They argue the landlord is adding scope in order to support an argument that the renovation process will be lengthy and therefore more likely to require vacancy. The landlord in response says he is entitled to add to the scope.

The tenants also questioned the landlord's motive. They included an email dated May 20, 2017 from the landlord to them offering an additional month of rent in exchange for vacating at the end of June. The email closes with: "Please consider, as failing this appeal there are still other options available to me which I will have to pursue." The tenants also testified that the landlord said to them orally that they would be evicted, and that it was only a matter of time.

The tenants made clear that they are willing to remain in the rental unit and have the renovations take place around them. Their neighbor has offered them the use of a washroom while the washroom in their unit is unavailable. The tenants are also able to move out temporarily. Their neighbor and their prior landlords have offered them temporary accommodation. The tenants would also be willing to move into the other unit in the same building after renovations on that unit are complete.

Analysis

Section 49(8) of the Act provides that a tenant may dispute a 2 Month Notice by making an application within 15 days after receipt of the notice. The tenants here received the 2 Month Notice on April 25, 2017 and filed their application on May 2, 2017 and are thus within the 15 day time limit.

Section 49(6) allows a landlord to end a tenancy if the landlord 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.

The onus is on the landlord to prove the reasons cited in the 2 Month Notice. The landlord has submitted that the proposed renovations do not require permits and has included a letter from a contractor stating as much. The tenants do not argue otherwise. Accordingly, the landlord must only establish that the proposed renovation necessarily requires the unit to be vacant.

Additionally, because the tenant alleges that the landlord did not issue the 2 Month Notice in good faith, the landlord must also establish that it truly intends to do what it states on the 2 Month Notice and that it does not have an ulterior motive that negates the honesty of intention: Residential Tenancy Policy Guideline #2 ("Good Faith Requirement When Ending a Tenancy").

Here, the landlord has not established that the rental unit must necessarily be vacant for the renovations in question to be done. The May 13 quote does not say that the unit must necessarily be vacant. It only states that the work cannot be completed "thoroughly and

effectively” while the unit is occupied. Although it may be less efficient to complete the renovations while the unit is occupied, or while the tenants relocate temporarily, that does not mean that the renovations cannot be done unless the unit is vacant.

Moreover, the May 13 contractor statement is not necessarily accurate. The tenants are correct that the proposed renovations could be coordinated and done more quickly and do not have to be done one after the other. Most contractors will in fact coordinate trades and projects towards maximizing efficiency. The tenants are also correct that the May 13 letter concerns work to be done on both units. The contractor does not say how much time he believes would be required for renovations on the tenants’ unit alone. Nor do I accept that the length or a renovation (or amount of money to be spent) necessarily correlates with how significant the renovation is or whether the rental unit must necessarily be vacant.

The tenants also submit that there is no hardwood flooring in the rental unit while the landlord says the opposite. However, the photograph in evidence from the building inspector suggests that the flooring is plywood, and the contractor quoting the work for the landlord includes this significant qualification on the “condition of the current wood floor”: “verification needed on wood floor underneath carpet in areas described in walk through and plans, that they can be sanded and finished.” In my opinion the photograph and the contractor’s qualification support the tenants’ submission that there is not hardwood requiring refinishing in their rental unit. The actual length of time, and the amount of work and disruption, associated with the renovations may all be significantly reduced as a result of this.

The landlord appears to be overestimating the time and disruption involved. By email dated May 1, he advised the tenants that because he would be doing most of the work himself the renovation would be “lengthy and dirty” and “unlivable.” This is not consistent with the quote in evidence from May 13, which has the contractor performing all of the work. Additionally, the landlord is a doctor and, as per his email to the tenants of April 14, he owns at least two other rental properties. It is unlikely he ever intended to do most of the work himself. The landlord also testified on the date of this hearing that he would be contributing where he could, for instance by refinishing the hardwood flooring and installing the new windows. However, the quote in evidence from the window company, which predates the landlord’s May 1 email, has that company installing the new windows, and the tenants also testified that the windows are large and elevated so it would not be realistic for the landlord to do this work. The May 13 quote has the contractor, not the landlord, refinishing the hardwood floors. These inconsistencies make the landlord’s evidence, including the statements in the May 13 quote, less credible.

The tenants are also willing to temporarily vacate the rental unit and have several options available to them in terms of places to live temporarily. They are also able to use the washroom at a neighbour’s home while still residing in theirs and have stated that they are willing to remain in the rental unit and have the renovations take place around them. The landlord has did not respond to their suggestion that they move temporarily into the other unit in the same building after renovations on that unit are complete while their unit is renovated.

Based on the considerations outlined above, I am unable to find that the proposed renovations necessarily require the unit to be vacant.

Additionally, the landlord has not demonstrated that he does not have another competing motive that undermines his stated intention. The tenants question the landlord's motivations by suggesting his objective is to raise the rent considerable. The landlord appears also to have cautioned the tenants that he will terminate their tenancy one way or another. This also calls into question his good faith. Accordingly, the landlord is required to establish that he does not have another motive for terminating this tenancy beyond carrying out the stated repairs or renovations. Here, the evidence is clear that landlord intends to substantially raise the rent after the renovations, from \$1,410.00 to \$2,400.00. I conclude that the landlord has another motive, namely substantially increasing the rent, which undermines or negates his good faith in the circumstances.

The Act contains comprehensive provisions regulating rent increases. Allowing the landlord to terminate this tenancy in the circumstances would be allowing the landlord to circumvent those provisions.

Based on the considerations outlined above, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed.

The 2 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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 s. 9.1(1) of the Act.

Dated: June 14, 2017

Residential Tenancy Branch