



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, AAT, O

Introduction

This hearing was convened by way of a conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on May 2, 2017 to: cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"), allow access to the unit for the Tenant's guests, and for "Other" issues.

The Tenant, the Landlord, and legal counsel for the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and the Tenant's small amount of documentary evidence served prior to the hearing. However, the Landlord denied receipt of the Tenant's one page of evidence which related to an advertisement. The Tenant confirmed that she had not served a copy of this page to the Landlord prior to this hearing. Therefore, that evidence was not considered in the hearing or in my findings. Legal counsel confirmed that the Landlord had not provided any evidence prior to the hearing.

The hearing process was explained to the parties and no questions on how the proceedings would be conducted were raised. The parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party on the evidence provided. While both parties provided extensive oral evidence, I have only documented that relevant evidence which I relied upon to make findings in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to cancel the 2 Month Notice dated April 25, 2017?

Background and Evidence

Both parties agreed that this tenancy started at some point in 2007 under an oral agreement. Rent was payable by the Tenant at the onset of the tenancy in the amount of \$500.00 on the first day of each month. The current rent payable by the Tenant as of May 2017 is \$531.00 per month.

The Tenant confirmed receipt of the 2 Month Notice on April 27, 2017 by registered mail. The 2 Month Notice was provided into evidence and shows a vacancy date of June 30, 2017. Legal

counsel confirmed that the reason on the 2 Month Notice for ending the tenancy was because the Landlord has all the necessary approvals and permits required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord was informed that she bears the burden to prove the 2 Month Notice. Therefore, I invited the Landlord to explain the 2 Month Notice. Legal counsel explained that the Landlord is the owner of the rental property which comprises of four separate rental units within one building, one of which the Tenant rents. The Landlord was unable to financially sustain the rental building which was then turned over to a private lender. However, the rental building eventually went into foreclosure and during this time no renovations or repairs were undertaken by the Landlord. Eventually, the Landlord was able to regain financial control of the building and is now in a better position to make repairs to the rental unit.

Legal counsel explained that the repairs the Landlord wants to do are; to repaint the rental unit; install new windows; replace the flooring; and replace bathroom fixtures such as faucets, toilets, sinks and cabinetry.

Legal counsel stated that the Landlord needs to have vacant possession of the rental unit to undertake these repairs as the rental unit is old. The floor needs to be re-leveled and the bathrooms need changing out as the repairs have not been undertaken for a long period of time. Legal counsel submitted that all of these renovations are required to be done in one go in order to make it cost effective for the Landlord and that contractors in the area have limited availability and cannot do this work in stages. Legal counsel stated that the work will take place over a period of months.

Legal counsel stated that they did have a permit for the work to be carried out but confirmed that it was not provided into evidence and that it would have been prudent to have submitted this prior to the hearing. Legal counsel testified that she contacted a city official who confirmed to her that the Landlord did not require a permit for the renovations she was seeking to do. Legal counsel explained that the Landlord did apply for a permit for plumbing and electrical work but this could not be granted as this required the Landlord to obtain an architect and change the zoning for the property which the Landlord cannot afford to do at this moment in time.

The Tenant agreed that the floors in the rental unit were slanting and would likely require re-leveling but the Tenant stated that the Landlord had put the "Cart before the horse" in that there was no way to know the exact extent of the work that would be required and whether this was sufficient to warrant the ending of the tenancy. The Tenant did not dispute that the rental unit also required it to be painting as it was very old.

However, the Tenant was not in agreeance that the bathroom had to be repaired. The Tenant testified that she had a leak in 2007 and the Landlord called a plumber who spent two days completing repairs. The Tenant submitted that the Landlord is trying to use the notice to end tenancy as a way to disguise her requirement to undertake the repairs. The Tenant testified that

when repairs were requested from the Landlord, she refused to do them for the reason that she had no money and told the Tenant that if she did not like it, she can move out.

The Tenant acknowledged that the windows were old and needed replacing but the Tenant testified that the Landlord had previously promised that the windows would be slowly replaced, which they were not.

The Tenant questioned the good faith intention of the 2 Month Notice stating that it was a “reno eviction” and that the Landlord had previously filed to increase the rent of the rental unit through a hearing which took place in January 2017; the file number for which appears on the front page of this Decision.

The Tenant put forward questions to the Landlord asking how long the rental unit would be required to be vacant, whether the Tenant could be housed in another unit within the same building which the Landlord was advertising, and whether the renovations were essential and if they could be done in parts.

Legal counsel explained that that the renovations were essential as the building had been neglected during the tenuous ownership issues the Landlord had gone through. Legal counsel explained that all the flooring in the rental unit had be removed and it is only when that happens can the contractor establish the extent of work that will be required. Legal counsel explained that the floor may need a new subfloor or leveling compound to level it out and that this could take months to do depending on the availability of the contractors.

Legal counsel explained that the previous hearing which was the Landlord’s request for an additional rent increase was settled between the parties and the Landlord withdrew the Application. Legal counsel stated that the Tenant could not be moved into another rental unit as there were no vacancies and the vacancy the Tenant talked about had been re-rented after the previous tenancy had been ended properly under the Act. Legal counsel stated that the Landlord is renovating one rental unit at a time as and when her funds allow her to do so.

With respect to the Tenant’s claim requesting that the Landlord provide her guests with access to the rental unit, the Tenant testified that the Landlord is preventing her from having guests stay with her and stipulating times and dates when this is to happen. Legal counsel denied that the Landlord is prohibiting the Tenant from having guests at the rental unit.

With respect to the “other” issues as elected on the Tenant’s Application, the Tenant agreed to put the Landlord on notice of the “other” issues in this tenancy in writing and give the Landlord an opportunity to respond and provide relief thereafter.

Analysis

Section 49(6) (b) of the Act states that a landlord may end a tenancy in respect of a rental unit 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. Section 49.1(5) of the Act gives provides that a tenant may dispute a 2 Month Notice within 15 days after receiving it.

The Tenant confirmed receipt of the 2 Month Notice on April 27, 2017 and applied to dispute it on May 2, 2017. Therefore, I find the Tenant filed it within the 15 day time limit provided for by the Act. I find the contents and the approved form used by the Landlord complied with the requirements of Section 52 of the Act and the vacancy date allows for the correct time period of notice in compliance with Section 49.1 (3) of the Act.

In this case, the Landlord bears the burden to prove the 2 Month Notice. In particular, the Landlord must prove that she:

- has the necessary permits;
- is acting in good faith with respect to the intention to renovate; and
- the renovations are to be undertaken in a manner that requires the rental unit to be vacant.

As a result, I first turn my mind to the good faith component of the 2 Month Notice. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the 2 Month Notice. This might be documented through a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the 2 Month Notice, 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 issue of motive must be determined on whether to uphold the 2 Month Notice.

Based on the evidence before me, I am satisfied that the Landlord does have an intention to undertake renovations to the rental unit. The Tenant suggested that the Landlord was seeking to increase the rent for the rental unit as she had previously made an unsuccessful application to increase the rent. However, the decision pertaining to that hearing did not reject the Landlord's application for an additional rent increase but it was rather withdrawn as part of a settlement agreement. I also make this finding because the Tenant herself acknowledges that the rental unit is old, has been neglected for many years, and that much needed renovations are required. Based on the foregoing, I find there insufficient evidence to show the Landlord has an ulterior motive for ending this tenancy.

I next turn my mind to the issue of the building permit. Legal counsel confirmed that the Landlord did have a building permit for the renovations that were required but this evidence was not provided before me. I find that such a vital document would have been an essential component to prove this part of the above test. However, legal counsel argued that the renovations did not require any permits or approvals. Therefore, I turn my mind to the last

portion of the test, which is the requirement for the Landlord to prove that the intended renovations are so extensive that they require the rental unit to be vacated.

With respect to the Landlord's claim for painting, changing bathroom fixtures, and replacing windows, I am not satisfied that for these reasons, the rental unit needs to be vacated. The Landlord relied on oral evidence and submissions with respect to proving that these renovations were so extensive that they could not be done over a short period of time or while the Tenant was still residing in the rental unit. The Landlord provided insufficient evidence of the extent and impact of these renovations that would allow me to conclusively determine that they were so extensive and severe in nature that it warrants vacant possession of the rental unit.

Furthermore, I am not satisfied that these renovations cannot be carried out in stages and there is insufficient evidence to show that the renovations must all be completed together by one contractor alone as I find that each part of the renovations require different disciplines and trades.

The Landlord provided no contractor evidence, such as a schedule of works which prove the renovations would (a) take several months to complete and (b) that the planned renovations actually require the rental unit to be vacant as a practical matter rather than being more easily and economically undertaken if the rental unit was empty.

With respect to the flooring, I have no doubt that the flooring needs to be replaced as this was undisputed by the parties. However, I find the Landlord's oral evidence and submissions as to what work is required to be done to the flooring is speculative and only seeks to contemplate potential extensive work that may be required which is undetermined at the time of this hearing. The Landlord provided insufficient corroboration, such as contractor reports or a scope of work, which would have otherwise provided information of the work involved. This may then have enabled me to rule on whether this was sufficient to have the rental unit vacated for work done to the flooring.

Finally, I am not convinced that a contractor is not able to conduct any preliminary tests or initial analysis that would suggest or point to a scope and/or extent of work involved to remedy the flooring. I find this evidence is germane to the 2 Month Notice. Without such evidence and proof of any permits, I am not willing to accept disputed oral evidence alone to meet this burden of proof.

I find the Landlord's evidence is no more compelling than the Tenant's evidence. Therefore, the Landlord has failed to satisfy me that the rental unit is required to be vacant for the renovations the Landlord intends to undertake. Therefore, I grant the Tenant's request to cancel the 2 Month Notice which is of no force or effect.

I dismiss the Tenant's claim that the Landlord is stopping the Tenant from having guests visit the rental unit as the Tenant relied on a disputed allegation without any corroboration or supporting evidence. However, the Landlord was cautioned during the hearing about preventing the Tenant's guests visiting the rental unit.

Conclusion

For the reasons set out above, I hereby cancel the 2 Month Notice. The tenancy will resume until it is ended in accordance with the Act.

The Tenant failed to prove that the Landlord was prohibiting her from having guests. Therefore, this portion of the Application was dismissed without leave to re-apply. The Tenant's Application for "other" issues is dismissed with leave to re-apply after the Tenant puts the Landlord on sufficient notice of these "other" issues in writing.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 13, 2017

Residential Tenancy Branch