Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order to cancel the two month Notice to End Tenancy dated May 30, 2017.
b. An order disputing an additional rent increase.
c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant by posting on May 30, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by placing it in the mailbox on June 9, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated May 30, 2017?
b. Whether the tenant is entitled to an order disputing an additional rent increase.
c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2015. The rent was initially $1800 per month. The tenant paid a security deposit of $900. He subsequently paid a pet damage deposit of between $900 and $950. The rent is $1898 payable on the first day of each month.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- 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

In Berry v Kloet, 2007 BCSC 257 the Supreme Court of British Columbia held:

> 19 …As noted, s. 49(6) of the Act sets out three requirements:
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> > (a) The landlord must have the necessary permits;
> >
> > (b) The landlord must be acting in good faith with respect to the intention to renovate; and
> >
> > (c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.
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> 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.
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> 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.
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> 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.
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> 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 representative of the landlord gave the following evidence:

- A plumbing permit dated May 1, 2017 for tenant improvement of the water closet, wash basin and bathtub.
- A major renovation project for the entire building which includes changing of piping, flooring and the heating system.

The tenant disputes the claim of the landlord that there are sufficient grounds to end the testimony based on the following:

- The only permit provided by the landlord indicates the landlord intends to replace the water closet, wash basin and bathtub. He submits this does not require vacant possession.
- He talked to a plumber who advised this work should be completed within 2 to 3 weeks.
- The landlord is seeking to evict the tenant so that the landlord can raise the rent.

Analysis:
After carefully considering all of the evidence I determined the landlord failed to establish sufficient grounds to end the tenancy based on the following:

- The tenant has questioned the good faith intention of the landlord and the landlord has the burden of proof to establish sufficient cause.
- The landlord failed to prove given the evidence presented that vacant possession is necessary. The permit presented as evidence indicates the work is limited to replacing the water closet, wash basin and bathtub.
- The landlord testified more significant repairs are contemplated. However, the landlord failed to present evidence to support her allegation that permits have been obtained for the major repairs.
- The landlord failed to establish that it was necessary to terminate the tenancy even if vacant possession was necessary for a short period of time,

Determination and Orders:
After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the 2 month Notice to End Tenancy dated May 30, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The tenant sought an order disputing an additional rent increase. He testified it purported to increase the rent 11 months after his previous rent increase which is contrary to the Act. However, the tenant failed to file a complete copy of the Notice of Rent Increase. As a result I severed this claim. If the parties are unable to agree the tenant has the right to file another Application for Dispute Resolution to deal with this claim.

The tenant was successful with his application to cancel the Notice to End Tenancy. I ordered that the landlord pay to the tenant the cost of the filing fee in the sum of $100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: August 02, 2017

Residential Tenancy Branch