Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction
The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the two month Notice to End Tenancy dated July 31, 2017 and setting the end of tenancy for September 30, 2017

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 two month Notice to End Tenancy was personally served on the Tenant on July 31, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides on August 10, 2017. :

Issue(s) to be Decided
The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated July 31, 2017?

Background and Evidence
The tenancy start 5 years ago. The present rent is $400 per month. The tenant paid a security deposit of $200 at the start of the tenancy but has since used it for rent.

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 and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator, 2007 BCSC 257 Mr. Justice Williamson set out the law where a landlord has served a 2 month Notice to End Tenancy based on the provision set out above as follow:

> “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 agent for the landlord gave the following relevant evidence:

- The landlord has renovated the upstairs portions of the rental property including the ripping out of the carpet and tiles, painting, water tank, washing the blinds, replacing the toilet and sink.

- The works does not require a permit or municipal approval.
- This work started after the upstairs tenants gave notice and vacated on August 1, 2017.
- The landlord intends to do similar work for the basement suite.
- The work does not require permits or approvals. The landlord intends to rip out the carpets and tiles, re-paint the rental unit, replacing the blinds.
- The landlord has not had an opportunity to inspect the rental unit and the work may be more extensive
- The landlord attempted to give evidence alleging misconduct and cause. I ruled this evidence is inadmissible as it does not relate to the Notice to End Tenancy.
- While there is a "For Sale" sign on the front yard, the landlord no longer intends to sell as the landlord assembly attempts have fallen through.

The agent for the tenant submitted as follows;

- They produced a letter from the City indicating not permits or approvals have been applied for or issued.
- The work the landlord intends to do does not require vacant possession of any significant period of time.
- The ripping of the carpets can be carried out while the tenant is in the rental unit. Similarly the replacing of the toilet and sinks would take a few hours only. Painting would take a similar short period of time.
- The landlord failed to meet the requirements of section 49 of the Act.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient grounds to end the tenancy based on the grounds set out in the Notice to End Tenancy for the following reason:

- The landlord failed to prove the repair work is so significant that would require vacant possession.
- The landlord has not made an application to the City for permits or approvals.
- The landlord did not provide photographs or testimony from contractors to establish how much time was needed to complete the work.
- The landlord testified that further work may be needed which might involve obtaining approvals or permits. The landlord could have had an agent conduct an inspection provided notice was given in accordance with the Act. In the

absence of better evidence, I determined the landlord failed to prove such further work was required.

- Further, even if it was necessary for the rental unit to be vacant for a short period of time to complete the work, there is no evidence the landlord asked the tenant to vacate for such that period and that the tenant has refused.

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 July 31, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: September 20, 2017

Residential Tenancy Branch