



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAURIER MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 29, 2017 ("2 Month Notice"), pursuant to section 66; and
- cancellation of the landlord's 2 Month Notice, pursuant to section 49.

The landlord's two agents, landlord AH ("landlord") and "landlord NP," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord NP confirmed that she is the owner of the rental unit and the landlord company named in this application and that she had permission to speak on the landlord company's behalf. She also confirmed that the landlord, who is the property manager, had permission to speak on behalf of the landlord company as an agent at this hearing. This hearing lasted approximately 62 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed personal receipt of the landlord's 2 Month Notice on July 29, 2017. In accordance with section 88 of the *Act*, I find that that the tenant was duly served with the landlord's 2 Month Notice on July 29, 2017.

Issues to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's 2 Month Notice?

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 1997. Monthly rent in the current amount of \$1,082.63 is payable on the first day each month. A security deposit of \$362.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing.

The landlord issued the 2 Month Notice, with an effective move-out date of September 30, 2017, for the following reason:

- *the landlord has all 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 testified that he requires the tenant's rental unit to be vacant in order to renovate it. He said that no major renovations have been done in the unit since before the tenant moved in 1997. He claimed that the windows were replaced with a painting in the bathroom about four years ago, while the furnace and control valves were upgraded this year. He maintained that the tenant's deck was redone about seven years ago.

The landlord stated that it was the landlord's responsibility to maintain all rental units at an appropriate standard with the other units in the building. The landlord explained that the building was built in 1963. He said that of the total 21 units in the building, there were two other units, besides the tenant's, that had not been renovated since 1986. He

explained that renovations were not required in those two units because those occupants took better care of their units than the tenant did.

The landlord stated that he received a note from the tenant with her July 1, 2017 rent payment, which included the new rent amount of \$1,082.63 from her previous rent of \$1,044.00. He claimed that the note inquired as to whether the tenant would be receiving new carpets and painting in the rental unit since it had not been done at all during her twenty-year tenancy. He said after the tenant raised the issue, he spoke with landlord NP and decided to issue the 2 Month Notice to the tenant on July 29, 2017 in order to complete renovations. He said that he inspected the tenant's rental unit sometime between September 11 and 16, 2017, and spoke with a contractor on September 14, 2017, after which the contractor produced a letter, dated September 15, 2017, outlining the renovations to be done in the rental unit. The contractor's letter indicates the rental unit will be uninhabitable for 8 to 10 weeks while the renovations are being completed inside the rental unit.

The tenant testified that the landlord did not issue the 2 Month Notice in good faith. She said that she regrets asking the landlord for new paint and carpet in July 2017 because the landlord retaliated with a 2 Month Notice. She said that no renovations are required in her rental unit, but that new carpet and paint would be appreciated because it has been twenty years since any renovations have been done in her unit. She claimed that if the landlord is required to do renovations in her unit, she can temporarily vacate during the renovation period of 8 to 10 weeks and store her furniture and belongings elsewhere.

The tenant stated that she cannot afford the new rent of \$1,800.00 for her unit after the renovations are complete, or the other alternative unit in the same building offered by the landlord for \$1,400.00 (which is renovated but no longer available as per the landlord), because she has trouble affording her current rent of \$1,082.63 which was implemented as of July 1, 2017. She explained that the landlord is simply trying to raise her rent, as has been done with other units in the same building.

Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after she receives the notice. The tenants received the 2 Month Notice on July 29, 2017 and filed her

application to dispute it on August 17, 2017. Therefore, the tenant is outside the fifteen day time limit under the *Act*.

As per section 66 of the *Act*, I grant the tenant's application for more time to make her application to cancel the 2 Month Notice. I accept the tenant's evidence that she was unsure how the deadline of fifteen days was counted, assuming that it only included business days. The tenant's application was filed three days late, as it was due by August 14, 2017 (the next business day after the deadline of August 13, 2017) but it was filed on August 17, 2017. Further, the tenant did not apply past the effective date of the 2 Month Notice, which is September 30, 2017. Therefore, I find that the tenant is not barred by section 66(3) of the *Act*, from applying for more time to cancel the notice.

Accordingly, I find that the landlord has to justify, on a balance of probabilities, the basis of the 2 Month Notice, in order for it to be issued to the tenant in the first place.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, 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 Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

I find that the landlord has not met its burden of proof to show that all the necessary permits and approvals required by law were obtained to renovate the tenant's rental unit. The landlord stated that no permits or approvals were obtained for these

renovations because none are required. He claimed that even though electrical and plumbing work was being undertaken, it was of a minor nature that did not require permits or approvals. The landlord did not submit any documentary evidence from the City to show that no permits or approvals are required for the type of work to be done.

I find that the landlord has not met its burden of proof to show the 2 Month Notice was issued in good faith. I find that the landlord only decided to look into renovations and inspect the tenant's rental unit because the tenant asked whether she would be getting new carpets and paint since it had been twenty years. The time between the tenant's note of July 1, 2017 and the 2 Month Notice being issued on July 29, 2017, is less than one month. The landlord only inspected the tenant's rental unit and determined the renovations to be done between September 11 and 16, within two weeks before the effective date of the notice, September 30, 2017. The landlord is required to determine the necessary work to be done prior to issuing the 2 Month Notice to the tenant.

I find that the landlord is attempting to raise the tenant's rent by a substantial amount of \$717.37, which is not a valid reason to issue the notice. The landlord has increased the tenant's rent annually from its original amount of \$725.00 to its current amount of \$1,082.63. Although the landlord claimed that the maximum percentage was not charged annually, the rent was still raised over time.

I also find that the landlord's statements during the hearing were contradictory: on the one hand, the landlord has a responsibility to maintain all units at the same level, and on the other hand, two units that are eleven years older than the tenant's (in terms of the last renovations completed in 1986) do not need renovations to be done.

The landlord testified that the tenant could leave the rental unit temporarily and come back after the renovations are complete and pay a new rent of approximately \$1,800.00 per month. This was confirmed in the landlord's letter, dated August 22, 2017, which was issued to the tenant. A copy of the letter was provided for this hearing. The landlord stated that with all the renovation costs expended, the tenant would not be able to return to the unit and pay the same amount of rent of \$1,082.63. The landlord indicated that the renovations are necessary due to the state of the rental unit, including mold in different areas, but given that approximately \$50,000.00 to 60,000.00 would be spent on the renovations, this had to be recovered through a higher amount of rent from the tenant.

I also find that if the tenant is willing to temporarily leave her rental unit for the duration of the renovations, that an end to the tenancy is not required. The landlord testified that

the renovations will only take a short time of approximately 8 to 10 weeks. The tenant confirmed that she is willing to leave the rental unit temporarily and return. She confirmed that she can remove her furniture and belongings and place them in storage during this time.

In the Supreme Court of B.C. case of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the Court held that the fact that renovations might be more easily or economically undertaken if the unit were empty, is not sufficient to demonstrate that the unit must be empty for renovations to take place. Firstly, in order to warrant an end to tenancy, renovations must only be possible if the unit is unfurnished and uninhabited. Secondly, the landlord must establish that the only manner to achieve this vacancy or emptiness is by terminating the tenancy. In the above case, the Court held that it was irrational to think that a landlord could terminate a tenancy because a brief period of emptiness was required, which in that case was 3 days. The tenants in that case were also willing to vacate the suite temporarily and remove their belongings if necessary.

In this case, I find that an end to this tenancy is not required where the tenant is willing to temporarily vacate the rental unit. The renovation period, estimated by the landlord, is 8 to 10 weeks, which I find to be a brief period of emptiness. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, which is a requirement of section 49(6)(b) of the *Act*.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met its onus of proof to show that the landlord issued the 2 Month Notice in good faith to renovate the rental unit in a manner that requires it to be vacant.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated July 29, 2017, is hereby cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is ended in accordance with the *Act*. If the landlord completes renovations in the rental unit and the tenant vacates temporarily and returns after the renovations, the tenancy will continue at the tenant's current rent of \$1,082.63, subject to the rent increase provisions under section 43 of the *Act* and the *Residential Tenancy Regulation*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated July 29, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is ended in accordance with the *Act*.

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: November 07, 2017

Residential Tenancy Branch