



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy for landlord's use pursuant to section 49 of the *Residential Tenancy Act* (the "Act").

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on October 15, 2004. Rent of \$898.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$335.00 as a security deposit. On August 30, 2017 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use (the "Notice"). The reason indicated on the Notice is that 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 states that in May 2017 an outdoor water main pipe to the building burst with water running for about 2 to 3 hours affecting the units on the north side of the

building. The Landlord states that water damage affected the walls from the ground up to two feet. The Landlord states that as a result the affected units had to have their walls including the kitchen and bathroom walls replaced along with the kitchen cabinets that were also damaged by the water. The Landlord states that as asbestos is in the walls the unit must be vacant for the work to start. The Landlord states that four other units on the same floor as the Tenant's unit, including unit 210 have had work done to remove the floors and cabinets and that this took about 1.5 weeks "on and off" per suite. The Landlord states that it would take about two weeks to repair the drywall but that they currently have not obtained a contractor for the work. The Landlord states that the walls cannot be removed one unit at a time and that if one unit is occupied there would only be one fire exit available and two exits are required. The Landlord states that it will take four months "for sure" to remove all the drywall from all the affected units. The Landlord states that they have no timelines provided by any contractor as nobody knows how long it will take. The Landlord provides estimates for costs to repair but no timeline for the repairs.

The Tenant states that there was no water damage in his unit and that the flood only affected the outer walls of the building and only by unit 210. The Tenant states that about a week after the flood the Landlord inspected its unit. The Tenant states that the Landlord informed the insurance representative at that inspection that the Tenant's unit has 2 inches of water inside the unit. The Tenant states that there was never any water in its unit. The Landlord states that the Landlord never inspected behind any walls and only knocked on the walls finding no soft spots. The Tenant states that the water went around the patio and did not enter the unit. The Tenant states that only the gyprock on the exterior of the building was damaged. The Tenant states that he could accommodate the Landlord by leaving the unit for at least a month to enable the repairs to its unit. The Tenant notes that the Landlord only provided its evidence to support the validity of the Notice 7 days before the hearing.

The Landlord argues that the insurance cost estimates are evidence of the damages to the unit. The Landlord agrees that although the cost estimates include repairs to the ceilings and countertops these items were not damaged. The Landlord states that any photos of the damage are with the restoration company that only worked to extract water. The Landlord states that two feet of water was present in the Tenant's unit and that the unit was very cluttered and therefore impossible to assess for damage. The Landlord argues that the insurance company would not approve costs if there was no damage. The Landlord states that even the units above the Tenant's unit are damaged and that mold is increasing. The Landlord did not provide any photos of any mold damage. The Landlord states that in June 2017 the Tenant was offered a unit in another building owned by the Landlord however the Tenant refused the offer. The Landlord states that while the owner does own many rental buildings the Landlord only runs about 3 buildings and none currently have any vacancies. The Landlord states that it is unaware whether the other buildings owned by the owner have any vacancies. The Landlord states that the owner did not attend the hearing as the owner is in Europe.

The Tenant's advocate argues that there is no evidence of damage beyond unit 210. The Advocate argues that the insurance claim appears to provide the Landlord with a win fall and that the Landlord is exploiting the situation to carry out more renovations than necessary in order to rent the units at a higher rate. The Advocate points to the Landlord's letter to the tenants dated June 2017 that indicates all the work would be done in two to three months. The Advocate argues that all the other tenants on the same floor as the Tenant have been convinced to leave.

The Witness states that she previously occupied unit 214 prior at the time of the flood but has since moved out. The Witness states that the flood only left her area carpet at the doorway damp and with a stain under the doorway. The Witness states that there were no water marks or stains on any of the unit walls. The Witness states that the Landlord never communicated with the tenants about possible accommodation by the tenants. The Witness states that previously during her tenancy a fire extinguisher

caused a leak and the Landlord did drywall work on that wall. The Witness states that no asbestos was ever mentioned when that work was done. The Witness states that she was present on July 21, 2017 when the insurance and flooring folk inspected her unit and that the insurance adjuster was told untrue things about where the water entered the unit. The Witness states that the Landlord told the adjuster that water entered the kitchen and bathroom. The Witness states that she corrected the Landlord and that they then lied about being inside her unit. The Witness states that for insurance purposes the Landlord marked an area inside her unit as an area damaged by the flood but that this area had been previously damaged and was completely unrelated to the flood.

The Advocate argues that the Landlord does not have a good faith intention and is using the flood as a pretext to renovate and re-rent the unit at higher rental rates. The Advocate argues that remediation is not being done due to the flood. The Advocate points to the Tenant's evidence of a statement from another tenant that was in unit 212 and that statement indicates that there no flooding into that unit either.

The Landlord states that the building is very old with issues and that even with renovations the Landlord would not obtain market rent. The Landlord states that she thinks that their most recent vacant unit in July 2017 brought in rent of \$1,250.00.

The Landlord states that if the Notice is found to be valid they would agree to an order of possession for January 30, 2018.

Analysis

Section 49(6)(b) of the Act provides 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, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. There is nothing in the estimate for repairs that indicates the repair costs were put together or approved by the insurance company.

There is no accompanying or attached letter from the insurance company about the estimates. The Landlord provided no documentary evidence to support that the Tenant's unit was damaged at all and the estimate for repairs includes repairs to items that the Landlord states were not damaged from the flood. I find therefore that the estimate is not evidence of damages but only evidence of the type of repairs that the Landlord wishes to make. I also consider that the Landlord's unsupported evidence of flood damage to the unit is not credible in the face of the Tenant and Witness evidence of their units having no damage from a flood.

While I can accept that the Landlord intends to renovate the unit and that asbestos is present the Landlord provides no supporting evidence that because of the asbestos the Tenant's unit must be vacant. Since the Landlord's evidence of the basis for repairs is not credible in the face of the Tenant and Witness evidence, I consider that the Landlord's overall evidence may also not be credible. Since the Landlord provided no supporting assessment or timeline for repairs from a credible source I find that the Landlord's evidence of the need for vacancy is not sufficient to establish that the unit must be vacant. I therefore find on a balance of probabilities that the Notice is not valid. The Tenant is entitled to its cancellation.

Conclusion

The Notice is cancelled and the tenancy continues. 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: December 08, 2017

Residential Tenancy Branch