



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Woodbridge Development (Baycrest Ltd.)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 23, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notices to End Tenancy for Landlord's Use of Property (the Notices).

The Tenants were present and were also represented at the hearing by their advocate, S.C. (collectively referred to as the "Tenants"). The Landlord was represented at the hearing by an agent (referred to as the "Landlord"). All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant and pertinent to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notices cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

There are two 2-Month Notices that have been issued by the Landlord. The Landlord issued the first Notice on November 7, 2017, by mailing it to the rental unit. The Tenants acknowledge receiving the Notice on November 8, 2017. The effective date of this Notice was listed as February 28, 2018. Then, after the Tenants filed to dispute the first Notice, the Landlord issued a second Notice on November 20, 2017, by posting a copy to the Tenants door. The effective date of the second Notice was listed as January 31, 2018.

The reason listed on both Notices is the same and is as follows:

- 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 stated that when they issued the first Notice, they gave the Tenants extra time to move, beyond what they were required to do. Then when the Tenants filed to dispute this Notice, the Landlord stated that he re-issued the Notice with less time to move out.

The Landlord has stated that they do not yet have the demolition permit because in order to obtain a permit, they need to test for hazardous materials (asbestos and lead etc.). The Landlord also stated that if these materials are found, then they need to remediate and remove any of these materials, and provide a completion/clearance certificate prior to getting their demolition permit for the rental unit. The Landlord stated that they do not want to start testing or removing any hazardous materials until the Tenants have vacated the unit. The Landlord further stated that this property is part of a large townhouse development project they are working on, and this is one of many houses they have to demolish in order to proceed. The Landlord indicated that, in his experience so far with the neighboring houses, there are in fact hazardous materials in them. The Landlord suspects this house would be no different since it is from the same era and will likely have asbestos and lead which needs to be removed.

The Landlord indicated that the first step in dealing with the hazardous materials is to test for it, then the actual removal will require significant risk to anyone living there, which is why they want to wait until the Tenants are out before starting this process.

The Tenants stated that they know the person who built the house, and they do not believe there is any asbestos in it. The Tenants further stated that there is no evidence at this point that any hazardous materials are actually present in the rental unit. The Tenants believe that some preliminary testing can be done while they still live there and they wish to stay as long as they can while they look for alternative housing.

The Tenants stated that the rental house is located on a "watercourse protection area", which requires special environmental permits and processes, all of which must be completed before the demolition permit can be issued. The Tenants provided a copy of an email from the City of Coquitlam to support this. They also provided a copy of the zone map, which shows the subject property is located within a watercourse protection area. The email from the City stated that the watercourse permit will be prepared after the 3rd reading of the rezoning application, which has not yet occurred.

The Landlord testified that he expects the 3rd reading of the rezoning application to happen at the end of February, 2018. The Landlord stated that he wanted to get the hazardous materials dealt with before the rezoning application passes because if they wait until the rezoning passes 3rd reading with the City, then they will be set back a month or two. The Landlord emphasized that they want to complete the remediation of hazardous materials in the unit while they wait for the approvals for the watercourse protection development permit. Both of these things are required to be done prior to the demolition permit being issued.

The Landlord stated that they are allowed to remove the hazardous materials without permits and they want to proceed with this work in order to obtain the hazardous materials completion/clearance certificate, which is a requirement for the demolition permit.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

First, I turn to the second Notice issued by the Landlord Policy Guideline 2 describes the good faith principle. In this instance it appears the Landlord was simply seeking retribution for the filing of an application by the Tenants. Tenants have a right to dispute a Notice to End tenancy under the law, and the Landlord was seeking to punish the Tenants for exercising a lawful right. Therefore, I find the second Notice was issued in bad faith. Given this, I hereby cancel the second Notice issued by the Landlord. The remainder of my analysis will focus on the first Notice that was issued (herein referred to as the Notice).

The Tenants acknowledge receipt of this Notice on November 8, 2017. The Landlord stated that the Notice was issued because they intend to demolish the rental unit.

Section 49 of the *Act* establishes the provisions regarding the Landlord's use of property. Subsection 49(6) of the *Act* reads as follows:

49 (6) *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 do any of the following:*

(a) demolish the rental unit;

Section 49 of the *Act* establishes that the Landlord must have received all the necessary permits and approvals as required by law to demolish the rental unit prior to issuing a 2 Month Notice to End Tenancy for Landlord Use of Property to the Tenant. When the Notice is disputed by the Tenant, the Landlord will be expected to prove that s/he has those permits or approvals.

In this case, the Landlord is stating that the hazardous materials in the house (asbestos and lead) need to be removed before they can get the demolition permit for the house. The Landlord stated he has reason to believe these materials are present due to his experience with similar homes nearby. I acknowledge there is inherent risk involved in disturbing these types of materials, and that it is not reasonable for Tenants to live in the house while these materials are removed, should they be found in substantial amounts. I also acknowledge that the City requires a clearance certificate to show that hazardous materials, if present, have been dealt with prior to demolition. However, I note that the Landlord has insufficient evidence to show that there is asbestos or lead, or that any actual remediation is required. The Tenants have expressed that they believe the preliminary testing can occur while they are in the unit to see if any hazardous materials are present. Ultimately, there is insufficient evidence to show that there are hazardous materials present, or that the Tenants are unable to continue to reside there while this is tested for, and the remainder of the demolition permit requirements are met.

I am mindful that the Tenants have provided an email indicating that the house is part of a watercourse protection area and it is clear that a watercourse protection development permit must first be issued before the demolition permit can be issued. Overall, it is evident that there are several requirements placed on the Landlord in order for the demolition permit to be issued. Although one of them is a clearance certificate to show there are no hazardous materials left in the house, I find there is insufficient evidence to show all other criteria for the demolition permit have been met, such that the remaining items

left for the Landlord to complete in order to get their demolition permit require the Tenants to move out. It appears the Landlord may be able to continue to work on the other permits while the Tenants remain in the unit.

The Act specifies 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 demolish the rental unit. In this case, I note that all permits are not in place. In certain situations where the only thing preventing the Landlord from obtaining all necessary permits and approvals is vacant possession of the rental unit, an exception may be made and an order of possession may be issued. However, in this case, there appears to be other permits required, and not yet completed, independent of whether or not there are any hazardous materials to be removed.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy at this time; therefore, the Tenants' application is successful and the Notice received by the Tenant on November 8, 2017, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Under the circumstances described above, it is clear that the Landlord is going to seek to end this tenancy again, in the near future. I encourage both parties to discuss a mutually acceptable means and a reasonable time for the tenancy to end. In any event each party remains at liberty to apply for dispute resolution should a new Notice to End Tenancy be issued.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from one future rent payment.

Conclusion

The Tenants' application is successful. The Notices are cancelled.

The Tenants may deduct the amount of \$100.00 from one future rent payment.

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: January 25, 2018

Residential Tenancy Branch