



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding AARTI INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 1, 2017 (the "Application"). The Tenant applied for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 28, 2017, which had an effective date of September 30, 2017 (the "Two Month Notice"), pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing on her own behalf and was assisted by D.D., her advocate. The Tenant called the following witnesses to provide testimony: A.C., M.S., and F.D. The Landlord was represented at the hearing by D.M. and C.Y. Several witnesses provided testimony on behalf of the Landlord: R.D., P.J., I.S., N.J., and A.A. All those giving evidence provided a solemn affirmation.

The parties acknowledged receipt of the documentary evidence to be relied upon. No issues were raised with respect to this evidence during the hearing. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with these documents for the purposes of the *Act*.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, cross-examine each other's witnesses, and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background and Evidence

The parties confirmed the tenancy began on November 1, 2000. Currently, rent is due in the amount of \$730.00 per month. The Tenant paid a security deposit of \$332.50, which the Landlord holds.

D.M. testified that the Landlord intends to fully renovate the rental unit, and that the work requires vacant possession. Accordingly, the Landlord issued the Two Month Notice, which was issued on the following basis:

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.

[Reproduced as written.]

He referred to an Inspection Report, dated March 13, 2017, which was submitted into evidence. The Inspection Report informed the decision to renovate the rental unit. Briefly, recommendations included repair or replacement of kitchen sink and plumbing; repair or replacement of ceilings; investigation and repair of a wall, and possible rot/mold damage; repair of a hole in the bathroom wall; level floors; refinish or replace wood floors; replace a door and jamb; investigate and repair rotten window sills; repair shower tiles; upgrade electrical panel; reinstall a receptacle.

The Landlord called a number of witnesses to provide testimony. First, the Landlord called R.D., the general contractor, who testified the renovation project will include significant changes, including a full upgrade of the electrical and plumbing systems, removing and replacing drywall, removing and replacing flooring, replacing cabinetry and tiles, painting, and a full renovation of bathrooms. R.D. estimated the work will take three months. The electrical and plumbing work alone would take about four weeks as these changes cannot be completed simultaneously. He further speculated that renovations could be delayed if the presence of asbestos or urea formaldehyde is discovered.

Under cross-examination, R.D. was asked about his previous estimate that the renovation would take two to three months, to which he replied his current estimate is based on information that was not available at the time of his original estimate.

Second, R.J., a plumber was called to provide testimony on behalf of the Landlord. He testified that he will be fully upgrading plumbing in the rental unit. A copy of the plumbing permit, issued on July 26, 2017, was submitted into evidence. R.J. estimated the plumbing upgrade will take about two weeks, plus a few days for finishing work. He testified the disruption caused by the plumbing work will require the Tenant to be out of the rental unit. R.J. confirmed no other trades can work while the plumbing upgrade is being carried out. On behalf of the Tenant, D.D. was provided with an opportunity to cross-examine R.J.

Third, the Landlord called I.S., an electrician, to provide testimony. I.S. testified the electrical system will be upgraded, and that the electrical panel will be upgraded and relocated for convenience and safety. A copy of the electrical permit, issued on July 21, 2017, was submitted into evidence. I.S. estimated the project would take one to two weeks, noting the electrical work could not take place at the same time as plumbing to ensure components were not located too close together.

Under cross-examination, I.S. confirmed the electrical permit submitted into evidence by the Landlord does not reflect the full scope of the work to be done. However, he testified that the permit, which was based on a home inspection, would be upgraded to reflect the planned work.

Fourth, the Landlord called N.T., an insurance agent, to provide testimony. N.T. confirmed the electrical system needs to be upgraded, and that failure to do so may result cancellation of the owner's insurance policy. On behalf of the Tenant, D.D. was provided with an opportunity to cross-examine N.T.

Fifth, A.A., a former caretaker at the rental property, testified he occupied a unit in the rental property as a caretaker from October 2016 to April 2017. He testified he was responsible for routine maintenance and minor repairs. On behalf of the Tenant, D.D. was provided with an opportunity to cross-examine A.A.

The Tenant has requested cancellation of the Two Month Notice on the basis that vacant possession of the rental unit is not required and that the Two Month Notice was not issued in good faith.

With respect to the Tenant's assertion that vacant possession is not required, the Tenant relied on a letter from A.C., a contractor, dated September 20, 2017. In it, A.C. advised of his opinion the current electrical system is adequate and would not have to be upgraded unless undergoing a major renovation. He opined that adding receptacles would not require the Tenant to vacate the rental unit, and that this work would take one to two days.

A.C. was also in attendance at the hearing. On cross-examination, he acknowledged that a full upgrade of the electrical system would take longer than the work contemplated in his letter.

The Tenant also relied on a type-written letter from P.D., dated September 15, 2017, a copy of which was submitted with the Tenant's evidence. In it, P.D. indicated he performed tiling repair in the Tenant's rental unit in 2004, and that there did not appear to be an issue with the tile at that time. P.D. did not attend the hearing.

The Tenant claimed the Landlord does not intend in good faith to do the renovation and repair work. In support, she called a former tenant, M.S., to provide testimony. M.S. testified that he was evicted from the building based on the Landlord's desire to have a caretaker, A.A., occupy his rental unit. Although M.S. claimed to have vacated the rental unit on August 1, 2016, he testified that he never saw A.A. at the rental property. When asked specifically how he came to be aware A.A. did not occupy his former rental unit, he advised that he visited the rental property on occasion. M.S. also testified that, during a meeting with D.M. in 2015, it was suggested the owner of the rental property wanted to make more money from the rental units. In written submissions, the Tenant suggested that the Landlord had, in 2015, applied to the Residential Tenancy Branch for a significant rent increase.

The Tenant also called F.D., a former tenant, to provide testimony. F.D. testified that he lived in the rental property until May 2017, at which time he chose to leave his rental unit out of concern that he might be evicted, and issues with the roof and plumbing. In addition, he testified he never saw A.A. occupying the rental unit from with M.S. had been evicted. F.D. also testified to his belief that the Landlord wishes to charge more rent at the rental property. D.M. was provided with an opportunity to cross-examine F.D. on behalf of the Landlord.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to end a tenancy when the landlord intends in good faith to renovate or repair a rental unit in a manner that requires the rental unit to be vacant.

Policy Guideline 2 elaborates upon the meaning of "good faith". It states:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the 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 they do not have an ulterior motive for ending the tenancy.

[Reproduced as written.]

In this case, on behalf of the Landlord, D.M. testified that the Landlord intends to undertake a significant renovation of the Tenant's rental unit and that vacant possession is required. The Landlord provided witnesses that included the general contractor, the electrician, and the plumber. Each confirmed that vacant possession will be required. The Landlord also provided plumbing and electrical permits, although I acknowledged the electrical permit required an update. In addition, the Landlord's insurance agent testified that the Landlord is at risk of having insurance cancelled if electrical upgrades are not completed.

The Tenant submitted that the proposed renovations do not require vacant possession or that the Two Month Notice was not issued in good faith. Specifically, The Tenant submitted that the Landlord has sought to end a number of tenancies out of a desire to increase rents in the property. In addition, the Tenant asserted that the Landlord evicted a tenant, M.S., on the basis that a caretaker would occupy the rental unit. However, the Tenant and two witnesses testified to their belief that a caretaker never moved into the rental unit.

I find it more likely than not that the Landlord truly intends to do what was indicated on the Two Month Notice. Further, I find there is insufficient evidence before me that the Landlord has not acted in good faith. Accordingly, I find that the Two Month Notice is upheld and the Tenant's Application is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the Two Month Notice was submitted with the Tenant's documentary evidence. I find the One Month Notice complied with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession. However, on behalf of the Tenant, D.D. requested that, if an order of possession is granted, I exercise my discretion to grant an order that is effective more than two days after service on the Tenant. However, I note the Two Month Notice is dated July 28, 2017. The Two Month Notice was disputed in the Application, which was received at the Residential Tenancy Branch on August 1, 2017. The Landlord has waited almost six months for a determination. I find it would be unreasonable to further extend the tenancy. Accordingly, the order of possession will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed, without leave to reapply. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 29, 2018

Residential Tenancy Branch