Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WANKE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he was handed the 2 Month Notice by the landlord on December 20, 2017, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on or about January 9, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.*

The landlord produced no written evidence for this hearing. At the beginning of the hearing, the landlord confirmed that they had received the tenant's written evidence. On that basis, I find that the tenant's written evidence was served in accordance with section 88 of the *Act*.

During the course of the hearing, the landlord said that one of the documents referred to by the tenant, a January 5, 2018 email from the landlord to the tenant, was not included in the written evidence package provided to her by the tenant and should not be considered in reaching my decision. The tenant gave emphatic sworn testimony that

this email was included in the written evidence provided to the landlord. After I read the parties the contents of this email, the landlord confirmed that this was indeed her email and that the content was as stated in the copy of the email entered into written evidence by the tenant. Since the landlord was the author of this email, clearly had a copy of this within her possession and there was no dispute as to its authenticity, I have considered the January 5, 2018 email in reaching my decision. I find that there would be no unfairness in doing so as this was clearly information that the landlord was aware of prior to this hearing.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy for an approximately 30-year old single dwelling home began as a one-year fixed term tenancy on September 15, 2011. When the initial term ended, the tenancy continued as a month-to-month tenancy. The current monthly rent of $1,600.00, payable in advance on the first of each month, has not been raised since the original tenancy agreement was signed. The landlord continues to hold the tenant's $800.00 security deposit and $400.00 pet damage deposit paid when this tenancy began.

The landlord's 2 Month Notice seeking an end to this tenancy on February 28, 2018 identified the following reason for ending this tenancy:

- *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.*

At the hearing, the landlord gave sworn testimony that extensive repairs and renovations were necessary for this home. She said that the 10 year old carpets needed to be replaced as did flooring throughout the whole house. She testified that the planned renovations included the renovation of cabinets and the likely replacement of plumbing. She testified that a series of exterior repairs also needed to be undertaken, including the removal of an enclosed deck, which had led to water pooling and damaging the rental home. Repairs would also be required to remove a carport

enclosure, and to check the attic to ensure water was not entering the rental home from the roof. She estimated that the total repairs and renovations planned by the landlord would cost approximately $30,000.00, and would take about two months to complete.

The landlord testified that in her experience in that community, permits would not be required from the local government body, unless the plumbing changes ended up requiring permits. The landlord said she had not received any written advice from the municipality to confirm that the landlord would not require permits to undertake this work. She said that there was no way of knowing until the work commenced the extent of the plumbing work that would be required.

The landlord also testified that plans had changed somewhat since issuing the 2 Month Notice. She explained that her parents, the two principals in the company that owns this property, have been attempting to obtain approval from the municipality to upgrade another property. Although they had hoped that they would be given permission to live there while these upgrades were happening, her parents learned recently that they would have to find another place to live while these renovations were happening. She said that their current plan would be to live in the tenant's rental home once the renovations were completed to the tenant's building so that the renovations could be completed on their own current home.

In her written evidence and her sworn testimony, the tenant maintained that the landlord was not acting in good faith in issuing the 2 Month Notice. The tenant asserted that the real objective of the landlord in seeking an end to this tenancy was to renovate the rental home so that more rent could be obtained. The tenant maintained that she should not be required to move because the landlords had failed to increase her monthly rent each year in accordance with the rent increase provisions of the *Act*. She also claimed that the renovations were not essential and that some of the work to the deck had already been done.

The tenant also noted that some of the work identified by the landlord would involve electrical work, which would clearly require permits from the municipality. The landlord said that she did not realize that electrical outlets were in some of the locations where work was proposed. The landlord agreed that permits would be necessary, if that were the case.

The tenant also gave undisputed sworn testimony that she spoke with the landlord about this matter after the landlord issued the 2 Month Notice and the landlord confirmed that the objective of the renovations was to remove the tenant and obtain

more rent from someone else. The tenant gave undisputed sworn testimony as to a conversation she had with another of the landlord's tenants who confirmed that this information had been conveyed to that tenant, too.

The tenant also said that she would be willing to find another place to live on a temporary basis while the rental home was renovated if she were permitted an opportunity to return there for the same rent once the renovations were complete.

The tenant also made specific reference to the January 5, 2018 email from the landlord in which the landlord cited the following:

> *…Our biggest concerns are the yard maintenance and the rental rate. If you agree to maintain the yard regularly I have been authorized to sign a 6 month lease with you at a rate of $2,000.00 per month. Maintaining the yard would require the following:…*
>
> *When your lease expires we will do an inspection so see how the property is looking and if everything is satisfactory we will renew your lease for another year…*

As was noted above, the landlord challenged the eligibility of considering the above email for this hearing, but did not dispute the content of the email. She also confirmed that it is the intent of the landlord to rent the premises for a higher monthly rent once the renovations are completed.

Analysis

In accordance with subsection 49(8) of the *Act*, the tenant must file an application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month on December 20, 2017 and filed the application for dispute resolution within the fifteen day limit provided for under the *Act.*

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Paragraph 49(6)(b) of the *Act* allows a landlord to issue a 2 Month Notice to end a tenancy for landlord's use of the property in the event that a landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

As the tenant has questioned the extent to which the landlord was acting in "good faith" in issuing the 2 Month Notice, I have also considered *Residential Tenancy Policy Guideline #2,* which outlines the "Good Faith Requirement when Ending a Tenancy" in the following terms:

> *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 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 they do not have an ulterior motive for ending the tenancy.*

In this case, the landlord produced no written evidence to support her sworn testimony that permits would not be required to undertake what she estimated to be $30,000.00 of repair and renovation work to this rental home. During the hearing, when she discovered that the proposed renovations would require the replacement or repositioning of electrical outlets, she confirmed that this type of work would require permits from the municipality. In addition, she testified that plumbing changes could also require permits from the municipality. In the absence of any of these permits or any evidence from the municipality to support the landlord's claim that the municipality would not require permits for this work, I find that the landlord does not have sufficient evidence to demonstrate that this tenancy could be ended on the basis of a 2 Month Notice issued pursuant to paragraph 49(6)(b) of the *Act*.

The failure to have permits in place or to demonstrate that permits were unnecessary for this $30,000.00 renovation is sufficient on its own to allow the tenant's application; however, there are also other reasons to allow the tenant's application to set aside the 2 Month Notice.

I find that the landlord's January 5, 2018 email confirms that the landlord's motive in issuing the 2 Month Notice was to extract more monthly rent from this rental home, even without any renovations being undertaken. The landlord's confirmation that she was authorized to sign a new lease for an additional $400.00 in monthly rent for a six month period, followed by a potential extension of that lease, serves to support the tenant's assertion that the landlord had other motivations to seek an end to this tenancy. One of these motivations was to circumvent the rent increase provisions of the *Act* and the *Regulation* enacted in accordance with the *Act*. The other motivation seems to have been to obtain the desired level of exterior care and maintenance for the yard and grounds for this rental property. If a landlord sought to end a tenancy for inadequate care and maintenance of the yard and grounds of a rental property, the usual method of doing so would be by way of the issuance of a 1 Month Notice to End Tenancy for Cause. No such Notice has been issued with respect to this tenancy. In reaching my decision, I have taken into account Policy Guideline #2, which establishes that I can also consider the landlord's motives in issuing the 2 Month Notice. I find that there is written evidence to support the tenant's claim that the landlord has other purposes in mind to end this tenancy than the stated objective of undertaking necessary repairs and renovations.

I further find that many of the renovations identified by the landlord could be accomplished over a relatively short period of time required to have the tenant absent from the property. Carpet replacement and reflooring do not necessarily require tenants to vacate a rental property altogether; even if they are required, a short absence may be sufficient. The tenant's offer to return once these renovations were completed is one that could also be accommodated were I to have found that the 2 Month Notice was issued in good faith and in accordance with the *Act*.

Finally, the landlord's own testimony regarding the changed circumstances of her parents, the principals in the company that owns this rental home, suggest that the current reason to seek an end to this tenancy for landlord's use of the property does not match with the reason cited in the 2 Month Notice.

For the reasons cited above, I allow the tenant's application to cancel the 2 Month Notice.

As the tenant has been successful in this application, I allow the landlord to recover the $100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice is set aside and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

To implement the monetary award of $100.00 to recover the tenant's filing fee, I order the tenant to withhold $100.00 from a future monthly rent payment. In the event that this cannot be readily accommodated, I issue a monetary Order in the tenant's favour in the amount of $100.00.

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: March 02, 2018

Residential Tenancy Branch