



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL OPL DRI FF

Introduction

Both parties and the property manager attended the hearing and gave sworn testimony. They agreed that the landlord served a Two Month Notice to End Tenancy dated October 26, 2017, to be effective February 28, 2018 by posting it on the door. They agreed that the tenant served his Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies

- a. to set aside the Notice to End Tenancy which was issued for landlord's use of the property (for renovation purposes)
- b. to dispute an illegal rent increase and;
- c. to recover the cost of the filing fee for this application.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 2 Month Notice dated October 26, 2017 be upheld or cancelled?
2. Has there been an illegal increase of rent?

Background and Evidence

It was undisputed that the Tenant has occupied this rental unit since October 3, 2000, rent is now \$1106 and the Tenant paid a security deposit of \$350 or \$375 (neither party could remember the exact amount.) The Landlord testified that the rental unit is a one bedroom unit and he has completed renovations on three others in the building. The contemplated renovations do not require permits as no walls are being moved and no plumbing is being changed. The floors will be refinished or replaced, tiles behind the shower will be replaced, kitchen cupboards including counters will be replaced and walls will be refinished.

The tenant said he filed his Application late because he was negotiating with the landlord and thought from the property manager's texts that he could stay if he paid a sufficiently large rent increase. He said he and a friend did a lot of work already in the suite and the kitchen and bathroom floors are replaced, some drywall was done and the unit was repainted. He agrees the kitchen cupboards are the same as when he moved in. He said he would like to stay during any renovation and could arrange to stay elsewhere for one to two weeks if necessary.

On October 26, 2017 the landlord served the Tenant with a 2 Month Notice which was issued pursuant to section 49(6) of the Act and listed the following reason:

- *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.*

The notice was incomplete as it did not have the tenant's name or address on it.

The Landlord stated that due to the required renovation they need to have the rental unit empty to be able to complete the work. The property manager said she is a licensed contractor with the city and she knows it is impossible to schedule trades so the work can be completed in one to two weeks. For example, cupboards must be ordered, then there is a wait for an installer and a wait for the countertops. The landlord said the floors are being stripped and urethane would have to cure and it is not a healthy environment for a tenant. They are concerned that the tenant and his daughter could not live in the unit while the work was being completed. They said the work that had been done by the tenant was not professional and not satisfactory.

The Tenant argued that he believes the Landlord wants him out so they can charge a higher rent. He supplied some texts and letters indicating he was negotiating to pay more rent. The landlord said he expects to spend about \$20,000 on the renovation so the legislated increase of 4% in rent in 2018 does not seem sufficient to help cover such costs. In evidence is a letter from the tenant agreeing to pay \$100 more than the increase.

Analysis

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy the test as set forth under the *Residential Tenancy Act*. Section 49 (6) (b) of the *Residential Tenancy Act* states 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 to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

Based on the testimony and documentary evidence the Landlord has not applied for permits for this property. That being said, if the scope of the renovation work is only replacing kitchen cabinets, floors and repairing and repainting interior drywall and tiles, I find it credible that the Landlord may not require permits for that type of work. His credibility is supported by the property manager who is a licensed contractor for the city.

The Tenant disputed the eviction notice and argued that he should not have to vacate the rental unit. The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

*“[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use “vacant” to mean “empty”. Thus, the arbitrator must determine whether “as a practical matter” the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in **Allman**. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.*

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a “loophole” for landlords.”

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the scope of the work being planned, as described in this hearing, would not require the rental unit to be vacant. While I agree that it would be easier for the Landlord to fix everything in one go, there is no indication that this long term tenancy should have to end to accommodate a request simply to make the renovations less expensive or easier for a landlord. While both parties may be inconvenienced during the renovations or repairs, common law, as quoted above, supports that a tenancy does not have to end in those situations.

Furthermore, upon review of the 2 Month Notice to End Tenancy provided in evidence, I find the Notice was not completed in accordance with the requirements of section 52 of the Act as the Notice did not have the tenant’s name and address on it as required. Based on the above, I uphold the Tenant’s application and cancel the 2 Month Notice to end tenancy issued October 26, 2017.

In respect to rental increases, section 43 of the Act provides rent may only be increased in accordance with the regulations, or as ordered by the director or as agreed to by a tenant in writing. I find the tenant’s rent is \$1106 and he agreed in writing in a letter in evidence dated January 12, 2018 to pay the legal increase (\$44) plus \$100 more which would make the rent \$1250 a month as of April 1, 2018. I find his rent is \$1250 as of April 1, 2018.

Conclusion

I HEREBY SET ASIDE AND CANCEL the 2 Month Notice to end tenancy issued October 26, 2017 and order this tenancy to continue until such time as it is ended in accordance with the Act. The tenant may recover his filing fee due to his success.

I HEREBY ORDER that the tenant may deduct \$100.00 from his next rent payment, as full satisfaction of the recovery of his filing fee, pursuant to section 72 of 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: March 13, 2018

Residential Tenancy Branch