Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1811 ADANAC STREET LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with for the tenant's application to cancel the landlord's Two Month Notice to End Tenancy, (the Notice), dated February 5, 2018.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property is the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, including any and all reports, photographs, diagrams, miscellaneous documents, letters, e-mails, and also the testimony of the parties, not all details of the evidence or the parties' respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below

The landlord issued the Notice seeking to end the tenancy based on section 49 (6) of the Act. Specifically, the landlord stated in the Notice that it had all necessary permits and approvals required by law…to renovate…the rental unit in a manner that requires the rental until to be vacant. The Notice was served on the tenant by way of registered mail sent February 6, 2018.

The tenant brought an Application for Dispute Resolution dated February 23, 2018, pursuant to section 49 (8) of the *Act* to dispute the Notice. The basis of the tenant's application is that she does not believe that the landlord intends in good faith to conduct renovations that require vacant possession.

Neither party filed a copy of a written tenancy agreement. The parties agreed that the tenancy started on June 1, 2003. There is a letter dated February 23, 2018, signed by a representative of Gateway Property Management Corporation, filed in evidence that states that the applicant, "…proved to be a great tenant…".

As part of it's package of evidence the landlord filed a quote prepared by Cabtec Renovations Inc. dated April 14, 2018, (the Quote). This is a detailed 3-page document that sets out the nature and scope of the proposed renovations.

It was the evidence of the President of the landlord that the plain wording of section 49 (6) (b) the *Act* is such that the landlord is entitled to end the tenancy as the work as detailed in the Quote requires the premises to be vacant. He testified that the contractor who prepared the quote is skilled, experienced and, that he has done many quality jobs for the landlord in the past, including work on his own home. I find that the Quote is an accurate description of the nature and scope of the proposed renovations.

The landlord's President and the witness LC gave extensive testimony about the history of the ownership of the building and their treatment of the tenant. I found them both to be credible witnesses and I have no difficulty accepting their testimony as truthful.

No evidence was given and no documents were entered into evidence to establish that all the permits required by law to carry out the proposed renovations (if any), are in the possession of the landlord.

It was the evidence of the tenant that she does not wish her tenancy to end as she has occupied the rental premises as her home since June 1st of 2003. She is willing to voluntarily vacate the premises for a period of 14 days to permit the proposed

renovations to be completed. The tenant did not take issue with the contents of the Quote. Her niece HM testified that when there was water damage in the premises last summer that required the tenant to vacate the premises for about 10 days to permit the required repairs and remediation to be done, she assisted the tenant. HM confirmed she is available and willing to do so again as/if required.

Analysis

Section 49 (6) of the *Act* provides in part as follows:

(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;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

In the present case I am satisfied on a balance of probabilities that due to the nature and extent of the renovations proposed by the landlord as detailed in the Quote, there is a requirement that the rental unit be vacant while these renovations are done.

The analysis does not end there as the BC Supreme Court has held that the statutory requirement that the renovations are to be undertaken in a manner that requires the rental until be vacant, has two dimensions to it. The dimension that is relevant in this case is set out in Berry V. British Columbia 2007 BCSC 257, a decision of the Honourable Justice Williamson, at para [22], which states in part:

"Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy…Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6)."

In the present case, the Quote filed in evidence by the landlord states: "If suite is vacant on May 1st estimated time to completion is 7-10 working days, estimated re-occupancy date May 10th."

The tenants uncontradicted evidence was that she was willing to voluntarily vacate the premises for a period of 14 days to permit the proposed renovations to be completed.

In Berry, at para [23] Justice Williamson went on to state:

"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. "

I find that the situation as described by the Court in Berry V. British Columbia is exactly the situation in the present case. Here the tenant has agreed to move out of the rental unit for a period of 14 days to allow renovations estimated at 10 working days to be completed.

In addition, section 49 (6) of the *Act* allows a landlord to end a tenancy for renovations or repairs only, "… if the landlord has all the necessary permits and approvals required by law [Emphasis added]". There are no exceptions in the *Act* to this requirement.

The onus is on the landlord who seeks to rely on section 49 (6) to end a tenancy, to prove that its meets all the requirements under that section of the *Act*. There is no evidence before me that the landlord did in fact have all the necessary permits and approvals at the time of the service of the 2 Month Notice to End Tenancy on the tenant.

Accordingly, I allow the tenant's application to cancel the Notice.

Given the above ruling it is not necessary to undertake a detailed review of the evidence adduced by the parties or, to make any specific findings regarding the requirement of good faith conduct by the landlord in serving notice to end the tenancy. I do note that Residential Policy Guideline 2 states in part:

"*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".*

The totality of the evidence of the landlord's President and the witness LC led me to conclude that the landlord acted in good faith in its dealings with the tenant.

Section 62 (1) (b) of the *Act* provides that I have the authority to determine any matters related to the dispute that arise under the *Act* or a tenancy agreement. Pursuant to that authority I make an Order that the landlord must give the tenant at least 15 days prior written notice, to be delivered personally to the tenant, of the date of the start of the

renovations. This is so that the tenant may make arrangements to put her property into storage and, find another place to stay for the agreed period of 14 days while the renovations are being done to her unit.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated February 5, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord must give the tenant at least 15 days prior written notice, to be delivered personally to the tenant, of the date of the start of the renovations to the tenant's unit.

Upon the receipt of the written notice and, in no more than 14 days thereafter, the tenant shall put her property into storage and shall move to another place to stay for the agreed period of 14 days, while the renovations are being done to her unit.

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: May 04, 2018

Residential Tenancy Branch