



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.A. CEDAR PLACE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL/FFT

Introduction

On April 18, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting to cancel a Notice to End Tenancy for Landlord's Use of Property and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The parties representing the Landlord, their witness and the Tenant and his witnesses attended the hearing and were affirmed to speak the truth. The Landlord and Tenant were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Landlord and Tenant concurred that the Notice of Hearing documentation was properly exchanged and received.

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.

Preliminary Matters

Before the Landlord and Tenant gave their testimony, the witnesses were directed to exit from the conference call and be available to call back into the hearing if required.

Concerns were raised from both parties that some of the evidence that was submitted to the Residential Tenancy Branch was not adequately exchanged prior to the hearing and further, that some evidence from each party was submitted late. Rather than adjourning this hearing and with the consensus of the Landlord and Tenant, I heard the testimony of the two parties and one witness and based my decision on their testimony and on evidence that was jointly acknowledged and reviewed by both Tenant and Landlord.

Issues to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated April 3, 2018, (the "Notice") be canceled?

Should the Tenant be reimbursed for the Filing Fee?

Background and Evidence

The Tenant and the Landlord agreed that the month-to-month tenancy began on January 2, 2010 with a monthly rent of \$1,350.00 due on the first of each month. The Landlord currently holds a security deposit of \$675.00 and a pet damage deposit of \$340.00.

Landlord AZ Evidence

The Landlord testified that they served the Notice to the Tenant on April 1, 2018 via registered mail. The Landlord acknowledged that the vacate date on the Notice was a mistake and should have been for June 1, 2018. On the second page of the Notice, the Landlord indicated that the reason for ending the tenancy was to renovate and repair the rental unit in such a manner that required the rental unit to be vacant.

Accompanying the Notice was a note that explained that the Landlord has to do renovations on the rental unit in a manner that required the unit to be vacant for 15 days. The Landlord included a cheque for \$4,425.00 for the Tenant; the amount was for two months rent, moving fees and the return of the security deposit.

The Landlord testified that significant water damage had occurred within the rental building and affected several of the rental units. In March 2018, they asked the Tenant to temporarily move into another rental unit for the weekend, while some more urgent repairs were made; however, the Tenant refused to move. The Landlord stated that the owner of the building is mad at the Tenant for not cooperating with the initial repair and further for not accepting the compensation package.

The Landlord said the Tenant must move out because she was worried if the Tenant didn't, that his furniture might be damaged. She stated that the Tenant wouldn't sign a waiver regarding damage to his furniture or harm to himself if he stayed in the rental

unit. The Landlord felt there was enough damage to the rental unit to require the Tenant to vacate the unit in order to accomplish the repairs and renovation.

Witness JO Evidence

Witness JO, the General Contractor for the Landlord, testified that there was extensive water damage to the building. When assessing the rental unit, he noted mould, wet insulation and water coming through the smoke alarm. He thought it would be “worthwhile” for the Tenant to move to provide easier access for repairs. Witness JO has been doing his best to accommodate the Tenant; however, the Tenant has been delaying the project.

Witness JO stated that the insurance is covering part of the damage, but the Landlord is doing a full renovation. He stated that most of the kitchen has to come out except for the lower cabinets and that there is still a lot to do. Witness JO stated that any emergency mitigation could occur soon and that the Tenant would be out of a kitchen.

Tenant Evidence

The Tenant disputed the Landlord’s evidence regarding the service of the Notice. The Tenant stated the Notice had not been sent on April 1, 2018 and provided the tracking number that indicated the Notice was accepted at the Post Office on April 3, 2018. The Tenant stated that he received the Notice on April 5, 2018.

The Tenant testified that the roof of the rental building had been leaking since 2014 and had affected several units within the building. The leak worsened and in 2016, the Landlord cut a hole in the ceiling of the rental unit kitchen and removed some of the cabinetry. No work was done between December 2016 and the early summer of 2017 and the Tenant continued to live in the rental unit.

The Tenant stated that repairs were completed in the summer of 2017; however, in October of 2017, the leak returned and the Landlord cut another hole in the kitchen ceiling and removed the cabinets. Conversations about the need for repair occurred between the Tenant and the Landlord over the winter and by March 2018, the Tenant stated the leak worsened and at one point, he had to stay home to empty a bucket, that had been placed under the leak, every 20 minutes.

The Landlord began doing repairs on the Tenant’s rental unit in March 2018 and the rental building’s roof was replaced in early April 2018. The repairs in the rental unit are

underway and the Tenant stated that many of the contractors have told him that he is not required to move out of the rental unit while repairs are being completed.

The Tenant has stated that he has agreed to accommodate the repairs and has been working with the contractors to allow for work to be completed. The Tenant travels for work and is away for weeks at a time and believes the repairs could be accomplished during these times. The Tenant would like to continue the tenancy and doesn't mind working around the renovations.

The Tenant testified that in February or March of 2018, the Landlord proposed a rent increase of \$50.00 per month. The Tenant argued that because he has been living with water damage and incomplete repairs for over three years, that it should not be increased. The Tenant requested that the rent not be increased and requested the Landlord's response. The Landlord responded by serving the Tenant with the Notice.

Analysis

Subsection 49(8) of the Act states the Tenant must file their Application for Dispute Resolution within fifteen days of receiving a Notice to End Tenancy. In this case, the Tenant testified that they received the Notice on April 5, 2018. The Tenant filed their Application for Dispute Resolution on April 18, 2018. Accordingly, I find the Tenant filed within the fifteen-day limit provided for under the Act.

The Landlord acknowledged that they recorded the wrong vacate date on the Notice and stated that it should have been June 1, 2018. During the hearing, I referred to Section 49(1) of the Act and advised that there must be two full months notice given to a Tenant; therefore, I find that the effective vacate date for the Notice is June 30, 2018.

Section 49(6)(b) of *the Act*, acknowledges 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The focus of my Analysis is based on whether the tenancy must end in order to accomplish the renovations. I refer to *Berry v British Columbia 2007 BCSC 257*, where the Supreme Court of British Columbia found that the requirement that a rental unit be vacant in order for repair or renovation work to be done involves two elements:

Firstly, as a practical matter, does the unit need to be empty for renovations to take place? Because the renovations might be more easily or economically undertaken if the unit was empty is not sufficient – renovations must only be possible if the unit is unfurnished and uninhabited; and, secondly, it must be the case that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the vacancy. (Summarized and not reproduced as written).

Where a Tenant applies to dispute a Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Notice is based. I accept the Landlord's and Witness JO's testimony that the rental unit is certainly in need of repair and that the ability to efficiently repair and renovate the rental unit would be improved if the Tenant was not occupying the rental unit.

Both the Landlord and the Tenant agree that the Tenant has been living amongst the ongoing repairs while occupying the rental unit. The Witness JO testified that he has been accommodating the Tenant, although not necessarily convenient for his crew, to continue living in the rental unit during the ongoing repairs.

The Tenant has testified that he is willing to vacate the rental unit for periods of time to allow the necessary repairs. The Tenant has stated that he is willing to move furniture, provide access and continue to work around any of the repairs as necessary.

There has been conflicting testimony and evidence presented regarding the extent of the repairs and further, the extent of the intended renovations; however, the Tenant has expressed his willingness to be flexible and I accept that the Tenant will cooperate with the Landlord's requirement to repair the rental unit.

For all of the above reasons, I find that the Landlord has not met the onus to prove that the rental unit must be unfurnished and uninhabited in order for the repairs and renovations to occur and that the tenancy should end. As a result, the tenancy will continue and I am canceling the Notice, dated April 3, 2018.

I further order that the Tenant provide access and cooperate with the Landlord, in accordance with the Act, to accomplish the required repairs and renovations.

I find that the Tenant's Application had merit and is entitled to reimbursement for the Filing Fee of \$100.00.

Conclusion

The Notice, dated April 3, 2018 is canceled and the tenancy will continue until ended in accordance with the Act.

The Tenant may deduct \$100.00 from a future rent payment as reimbursement for the Filing Fee for this Application.

I order the Tenant to provide access and cooperate with the Landlord, in accordance with the Act, to assist with the required repairs and renovations.

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 17, 2018

Residential Tenancy Branch