



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHANNON OR LEISURE RESORT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel a Two Month Notice to End Tenancy for Landlord’s Use of the Property (the Notice) and an order for repairs to the rental unit. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties confirmed receipt of all evidence 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.

Issues to be Decided

- Should the Notice issued on May 8, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to an order for repairs to the rental unit?

Preliminary Matters

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement regarding repairs:

1. The Landlord would complete the repairs listed below by July 20, 2018;
 - a. Repair the toilet in the master bathroom
 - b. Repair the Oven door
 - c. Repair the fridge.

The above terms of the settlement agreement were reviewed with all parties at the end of the hearing, and all parties confirmed that they were entering into the settlement agreement regarding repairs on a voluntary basis. They also confirmed understanding of the terms of the settlement agreement as full and final settlement of this matter. The Tenants may apply for compensation under the *Act* if these repairs are not completed according to this agreement.

I am left with determining the validity of the Notice and will produce on that matter.

Background and Evidence

The parties testified that the tenancy began on December 1, 2011, as a month to month tenancy. Rent in the amount of \$1,450.00 is to be paid by the first day of each month and Tenants paid the Landlord a \$725.00 security deposit.

Both parties agreed that the Tenants were served with the Notice to end tenancy dated May 8, 2018, by registered mail. The Tenants confirmed that they received the Notice on May 13, 2018. The Notice indicated that the Tenants were required to vacate the rental unit on July 31, 2018. The reason checked off by the Landlord within the Notice was as follows:

- The Landlord has all the 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.

The Tenant testified that she did not feel that the rental unit needed to be vacant to complete the proposed renovations and that she was willing to work with the Landlord and the contractors to ensure the repairs are completed.

The Tenant's advocate testified that the Landlord did not have the required permit from the city to conduct the proposed renovations.

The Landlord testified that he did not need a permit as the proposed renovations would not affect any walls. The Landlord testified that he had spoken to the city regarding the

possible need for a permit, but that he was advised that the renovations he was planning were not of the nature that they would require a permit.

The Landlord also testified that he had already renovated several other units in the building, stating that he was planning the same level of renovation to this rental unit. The Landlord provided an invoice detailing the work done to one of the other units, into documentary evidence. The Landlord testified that he intended to sell the rental unit after the renovations were complete and that he had done this before with the other units. The Landlord provided two accepted sale offers and one current listing for these other units into documentary evidence.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, the Tenants did dispute the Notice within the required timeline.

The Act also sets out the legal test required to enforce a notice issued pursuant to section 49, which states:

- (a) The landlord must have the necessary permits;
- (b) The landlord must be acting in good faith with respect to the intention to renovate; and
- (c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.

During the hearing, I heard contradictory testimony from both parties regarding whether or not the rental unit needed to be vacant in order to complete the proposed renovations. I find that each side had presented an equally plausible account of how this rental unit could be renovated.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence

submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. In the case before me, the Landlord has the burden of proving that the planned renovations require that the rental unit be vacant.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence, to satisfactorily me, that would out weight the contradictory verbal testimony satisfy of the parties, in this case. In the absence of sufficient evidence to prove the planned renovations require the rental unit to be vacant, I must allow the Tenant's application to cancel the Notice.

Therefore, I find the Notice dated May 8, 2018, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenant's application, and I find the Notice dated May 8, 2018, of no effect under the *Act*.

The parties are ordered to comply with the terms of the settlement agreement regarding repairs to the rental unit as outlined in this decision.

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: July 11, 2018

Residential Tenancy Branch