



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application by the Tenant claiming an order for the cancellation of a four month notice to end tenancy pursuant to section 49 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Do the renovations planned to the unit require the unit to be vacant?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: The tenancy of a lower unit in a house started, under written agreement, on August 14, 2015. Rent of \$575.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$287.50 as a security deposit. On June 30, 2018 the Tenant was given a four month notice to end the tenancy for landlord’s use (the “Notice”). The stated reason on the Notice is that the Landlord is going to “perform renovations or repairs that are so extensive that the rental unit must be vacant.” The details on the Notice are briefly set out as “lighting, plumbing, windows, paint, kitchen, floors, washrooms, finishing, cleanup”. The tenants in the

upper unit of the house have also been given a notice to end tenancy for the same reason.

The Landlord provided no documentary or supporting evidence. The Landlord states that the house was purchased as an investment property and has been up for sale since April 2018. The Landlord states that the house has not sold and is old so they intend to renovate both the lower and upper unit and then list the house again for sale. The Landlord states that they expect to retain the lower unit intact as a separate suite. The Landlord states that the renovations will be for updating the unit and to replace “whatever fixtures that need to go”. In response to a request to clarify its evidence with more detail on the planned renovation jobs, the Landlord states that “we are updating the whole suite and cannot say anymore” and “whatever needs to be done”. The Landlord states that no plumbing or electrical wiring will be required other than to add or replace bathroom and lighting fixtures. The Landlord confirms that no structural work will be done. The Landlord states that the work to the lower unit would take a couple of weeks at the most. The Landlord states that the unit needs to be vacant as the Landlord has had issues in the past when work was being done and that there could be early or late hours of work with noise or unexpected power outage or water issues. The Landlord agrees that if the power or water problems did happen to occur during the renovations the Landlord would act immediately to remedy the problems.

The Tenant states that he does not believe that extensive renovations are required to the unit as renovations were done to the unit in January or February 2018 with the installation of a new toilet, sink, kitchen fixtures and piping in the bathroom sink. The Tenant states that the unit is in good condition as shown in the photos of the unit provided as evidence for this hearing. The Tenant states that he was in construction himself and is aware of what would be required to complete the work described by the Landlord. The Tenant states that while he considers the flooring in the unit to be fine if the Landlord was going to install new flooring it would not likely take more than a day. The Tenant states that his wife has recently had medical problems and is currently in a

rehabilitation centre with the expectation of another placement in the future to a long term care facility. The Tenant states that he “absolutely can accommodate” construction on both the upper and lower unit because he is away from the unit for at least 12 hours every day in order to be with his wife. The Tenant states that if need be he could even temporarily relocate for a couple of weeks but that this likely would not be necessary as the Tenant could easily just stay overnight at the unit while the renovations are being done. The Tenant does not believe that the unit needs to be empty to accommodate the renovations described by the Landlord.

Analysis

Section 49(6) of the Act provides 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, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Given the Tenant’s evidence of the state of the unit and considering the Landlord’s lack of evidence on the detail or planning for the renovations to the unit, I consider that the Landlord has not spent much time on determining exactly what renovations will actually be required to the lower unit. I do not consider renovations to the upper unit to be relevant to the issue of whether the lower unit requires vacancy as the Act only allows renovations to the rental unit itself as a reason to end a tenancy of that unit.

The overall evidence tends to suggest that few renovations may be required to the lower unit. I also consider that the Landlord’s evidence of renovations indicate that they are cosmetic in nature. There is no evidence of any structural changes to be made to the unit and the time required for the renovations to the unit alone is very short. It appears that the primary reason for seeking a vacant unit is related to the noise and construction that would be occurring on the upper unit. This is not a reason that would substantiate a need for a vacant lower unit, particularly in the Tenant’s circumstances of being out of the unit for the most part of the day. For these reasons and considering the Tenant’s evidence that he can accommodate the renovations described by the

Landlord, I find on a balance of probabilities that the Landlord has not substantiated that the unit must be vacant in order to complete the planned renovations. I find therefore that the Tenant is entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 24, 2018

Residential Tenancy Branch