



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FBC PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on July 29, 2018 and has submitted a copy of the Canada Post Customer Tracking label as confirmation. The landlord's agents (the landlord) confirmed receipt. Both parties confirmed receipt of the submitted documentary evidence of the other party. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?
Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant with a 4 month notice to end tenancy issued dated June 28, 2018 in person on June 28, 2018 which provides for an effective end of tenancy date of November 1, 2018 and the reason is for renovations:

Perform renovations or repairs that are so extensive that the rental unit must be vacant.

The 4 month notice provides details which state:

Renovations	New Paint, New Flooring, New Appliances, Replace Old Sinks, Bathtubs, Toilets, Etc.
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The tenant argues that the landlord is acting in “bad faith” and that the specified renovations are purely cosmetic and do not require vacant possession of the rental unit. The tenant has offered to temporarily relocate from the unit in an effort to resolve the issue.

The landlord stated that this building is 96% vacant at the time of this hearing and that out of 21 rental units, only 3 remain occupied. The landlord argued that complete construction included of the entire building is an extensive renovation involving major plumbing upgrades, changing the boiler, hot water tank, electrical upgrades and the complete overhaul of all common areas and suites. The landlord has stated that at this time the necessary permits for demolition are in place and that as each phase is completed the relevant permits shall be obtained to move forward. The landlord stated that currently there is a plumbing permit and that an electrical permit was recently obtained.

The landlord claims that as per his General Contractor, “we have extensively renovated over 10 apartment buildings in the Greater Vancouver Area and have found that it is not safe or practical to have tenants remain on the property.” The General Contractor also stated that in an “extensive renovation on properties of this side it would be impractical to believe that we would be able to finish all the work we have outline in the renovation budget (Schedule “A”) in less time that we have anticipated.

The landlord has submitted in support of vacant possession:

- Copy of letter from General Contractor, dated August 31, 2018
- Copy of Building Permit
- Copy of letter from Plumber
- Copy of Renovation Budget Scope of Work

The tenants argued that the landlord has a history of providing misinformation to tenants. The tenants stated that they do not believe the landlord’s claims that vacant possession is required and that the landlord has failed to provide sufficient evidence to carry out the work based upon the submitted budget spreadsheet and photographs of past developments are irrelevant. The tenants argued that at the time of the hearing, the only permits in place are for plumbing only.

The tenants further argued that the vacant possession requested by the landlord is one of convenience and not of necessity based upon the planned work “renovations” of New Paint, New Flooring, New Appliances, Replace Old Sinks, Bathtubs, Toilets, Etc as per the notice to end tenancy dated June 28, 2018. The details provided by the landlord during the hearing were not part of the details as provided in the notice to end tenancy.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit by serving a notice to end tenancy to the tenant.

Where a tenant applies to dispute a 4 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 4 Month Notice is based.

Further 4 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, the tenants have argued that the planned renovations are purely cosmetic and do not require vacant possession of the rental unit. The tenants further argued that the vacant possession was for convenience and not for necessity as none of the listed renovation work would require vacancy as per the served notice to end tenancy.

The landlord has argued that the renovation process is extensive and a matter safety issues. The landlord stated that each unit would be renovated in phases which would require permits as they are required.

In this case, I accept the landlord's claim that safety is an issue during a renovation. However as provided by the landlord and noted by the tenants, renovations were planned and scheduled by the landlord to incorporate first demolition, then replacement of plumbing and then as required electrical work which requires permits. I find that the landlord has failed to provide sufficient evidence that the work although "extensive" cannot be achieved through proper planning and scheduling. The tenants have argued that the landlord's renovation work is for "convenience" and not of "necessity" as the landlord's claims for renovations seem to exceed those provided on the notice to tenancy. In this case, I accept on a balance of probabilities that the tenants' explanation that the renovations are one of "convenience" over that of "necessity" for the landlord. The tenants' application is granted. The 4 month notice dated June 28, 2018 is set aside. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent due to the landlord in satisfaction of this claim.

Conclusion

The tenants' application is granted.

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: October 1, 2018

Residential Tenancy Branch