



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC

Introduction

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

- cancellation of the landlords' 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated August 21, 2018 ("4 Month Notice"), pursuant to section 49(6); and
- an order requiring the landlords to comply with the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

"Landlord DC" and three tenants, "tenant DD," "tenant TD," and "tenant BD," did not attend this hearing, which lasted approximately 34 minutes. Landlord CD ("landlord"), tenant MD ("tenant"), and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to speak on behalf of landlord DC as an agent at this hearing. The tenant confirmed that she had permission to speak on behalf of the other three tenants not at this hearing. The tenant also confirmed that her agent had permission to speak on behalf of all tenants at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the Act, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' written evidence package.

The tenant confirmed receipt of the landlords' 4 Month Notice on August 21, 2018. In accordance with sections 88 and 90 of the Act, I find that all tenants were duly served with the landlords' 4 Month Notice on August 21, 2018.

The tenant did not identify any order for the landlords to comply so this claim is dismissed with leave to reapply.

Issues to be Decided

Should the landlords' 4 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began in February 2006 with the former landlord. The current landlords purchased the rental unit on August 10, 2018. Monthly rent in the current amount of \$913.50 is payable on the first day each month. A security deposit of \$400.00 was paid by the tenants and the former landlord applied it against the tenants' monthly rent. The tenants continue to reside in the rental unit. A written tenancy agreement was not signed for this tenancy. The rental unit is one half of a two-level duplex with four bedrooms and two bathrooms.

The landlord issued the 4 Month Notice, with an effective move-out date of December 31, 2018, for the following reason:

- *...perform renovations or repairs that are so extensive that the rental unit needs to be vacant.*

The landlord testified that she requires the tenants' rental unit to be vacant in order to renovate it. She said that one side of the duplex has already been renovated, which took six weeks, and she is now able to rent it out at a higher rate of \$2,295.00 per month. The landlords provided a copy of a building inspector's report indicating a number of deficiencies in the unit, which the landlord said need to be fixed. She explained that the renovations should only take six weeks and the tenants could return if they paid a higher rent of \$2,295.00 because they currently were not paying the market rent, otherwise the landlords have family members lined up to rent it for that amount. She said that the landlords have to remove the flooring and apply subflooring and then new flooring on top, paint the walls and ceiling, replace the appliances, furnace, hot water tank, and windows, baseboards, kitchen cupboards, bathtub, and shower downstairs. She maintained that there were no building permits required as confirmed by her research with the City. The landlord confirmed that there are no other issues with the tenants, that no other notices to end tenancy were issued to them besides the 4 Month Notice, no previous RTB hearings were held, and no attempts were made to

raise their rent. She stated that she drafted a written tenancy agreement that the tenants did not sign but she wanted to confirm there was a tenancy before issuing the 4 Month Notice.

The tenant stated that she cannot afford the new rent of \$2,295.00 for her unit after the renovations are complete. She stated that the tenants did some research regarding the water leaks and toilet issues but the landlords did not want their help. She claimed that the landlords provided the tenants with a draft tenancy agreement with no due date and then right after gave them the 4 Month Notice. She said that the landlords did not obtain the necessary permits that are required for electrical and plumbing work in the rental unit. The tenants' agent claimed that permits are required for the new furnace, hot water tank, and plumbing, according to the City official she spoke with verbally the day before this hearing. She explained that the tenants can temporarily move their belongings and the landlords can complete the renovations while the tenants are living in the rental unit.

Analysis

According to subsection 49(8)(b) of the *Act*, tenants may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after they receive the notice. The tenants received the 4 Month Notice on August 21, 2018 and filed their application to dispute it on September 19, 2018. Therefore, the tenants are within the thirty day time limit under the *Act*.

Accordingly, I find that the landlords have to justify, on a balance of probabilities, the basis of the 4 Month Notice, in order for it to be issued to the tenant in the first place.

Subsection 49(6)(b) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit where the landlords, in good faith, have all the necessary permits and approvals required by law and intend to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy.”

I find that the landlords have not met their burden of proof to show the 4 Month Notice was issued in good faith.

I find that the landlord is attempting to raise the tenant's rent by a substantial amount of \$1,381.50, which is not a valid reason to issue the notice. The landlord testified that the tenants can leave the rental unit temporarily and come back after the renovations are complete and pay a new rent of approximately \$2,295.00 per month. The landlord stated that with all the renovations completed, the tenants would not be able to return to the unit and pay the same amount of rent of \$913.50, as it was not the current market rent. The landlord claimed that she had family members lined up to rent this unit after the tenants vacate, at a rate of \$2,295.00.

In the Supreme Court of B.C. case of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the Court held that the fact that renovations might be more easily or economically undertaken if the unit were empty, is not sufficient to demonstrate that the unit must be empty for renovations to take place. Firstly, in order to warrant an end to tenancy, renovations must only be possible if the unit is unfurnished and uninhabited. Secondly, the landlord must establish that the only manner to achieve this vacancy or emptiness is by terminating the tenancy. In the above case, the Court held that it was irrational to think that a landlord could terminate a tenancy because a brief period of emptiness was required, which in that case was three days. The tenants in that case were also willing to vacate the suite temporarily and remove their belongings if necessary.

In this case, I find that an end to this tenancy is not required where the tenants can temporarily vacate the rental unit. The renovation period, estimated by the landlord, is six weeks, which I find to be a brief period of emptiness. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, which is a requirement of section 49(6)(b) of the *Act*.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that they issued the 4 Month Notice in good faith to renovate the rental unit in a manner that requires it to be vacant.

Accordingly, I allow the tenants' application to cancel the 4 Month Notice. The landlords' 4 Month Notice, dated August 21, 2018, is cancelled and of no force or effect. The landlords are not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is ended in accordance with the *Act*. If the landlord completes renovations in the rental unit and the tenants vacate temporarily and return after the renovations, the tenancy will continue at the tenants' current rent of \$913.50, subject to the rent increase provisions under section 43 of the *Act* and the *Residential Tenancy Regulation*.

Conclusion

The tenants' application to cancel the landlords' 4 Month Notice is allowed. The landlords' 4 Month Notice, dated August 21, 2018, is cancelled and of no force or effect. The landlords are not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is ended in accordance with the *Act*.

The tenants' application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

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: November 02, 2018

Residential Tenancy Branch