



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SDI INC AND 1177205 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FF

Introduction:

Two groups of tenants occupying two different units in the same building have joined their Applications to cancel the 4 month Notices they were served to end their tenancies. They and the landlord and a consultant attended the hearing and gave sworn testimony. I find that the tenants were served with the Four Month Notices to End Tenancy dated October 25, 2018 to be effective February 28, 2019 by posting them on the door or personally (to M.G.). The landlord agreed they received the Applications for Dispute Resolution by registered mail from both groups of tenants. All the parties acknowledged receipt of evidence from each other. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenants apply pursuant to the *Residential Tenancy Act* (the Act) for an order to set aside the Notices to End tenancy dated October 25, 2018.

ISSUES:

Does the landlord need to end the tenancy in order for the landlord to do renovations?
Are they acting in good faith?

Background and Evidence:

The landlord stated on the Notice that the reason for ending the tenancy is that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. They checked the box that "no permits were required". The landlord explained when they issued the Notices they initially were only contemplating removing and replacing the windows in this designated heritage building and some electrical work but after they inspected the units, they realized that more extensive work was required. The tenant alleges the landlord is not acting in good faith and the main reason the landlord is renovating is to raise rents. They submitted some emails of negotiations between the landlord and them wherein the landlord proposed increases to rent (to \$1660 a month) which was above the legally permitted increase. They had had the legal increase in

October 2018 which was served by the previous landlord so rent is currently \$1178 (Unit 1) and 1237.40 (Unit 4).

An issue in dispute is whether the rental unit needs to be vacant in order for the landlord to do the proposed renovations. The landlord submitted extensive evidence on this point. The building is over 100 years old and has a heritage designation. The city provided some funds for repairs which the previous owners have transferred to the present owner who bought the building in September 2018. The landlord said one major time consuming renovation is the replacement of all the windows. They provided evidence that this would take at least 4 weeks for the specialty company to remove the windows, repair sashes and frames, rebuild the windows offsite using heritage parts and then reinstall them. The window openings would be boarded up and egress would not be possible. The fire chief provided written evidence that the units should not be occupied for safety reasons while this work was done. The landlord supplied evidence from an insurer stating the building could not be insured during the renovations whether it was occupied or not and the contractors have limited liability. Initially the window renovation work was the reason for the Notice to End Tenancy and in an email on October 18, 2018, they said they hoped it could be completed by December 1, 2018 and a new tenancy agreement put in place if the tenants were in agreement. However, they also proposed a rent increase and noted other contemplated renovations in electrical work and no agreement was reached.

However the landlord said they realized the work would be much more extensive as they undertook similar renovations in another unit in the same building. They said that they have found it took 60 to 90 days to do the work of renovating kitchens, bathrooms, floors and windows and upgrading the electrical system. All the tenants agreed they are prepared to vacate their units and store their furniture for this extended period in order to preserve their tenancy. They emphasized they would continue to pay their rent and also waive any rights or claims to compensation from the landlord for their extended absence from their suites. They love their heritage building and want to preserve their tenancies. I verified this was the position of all the tenants.

In respect to the Notice to End Tenancy, one tenant (J.T.) who says he is a contractor stated the landlord did not have all the necessary permits and approvals which are required by law for the renovations before they served the Notice to End Tenancy. He said contractors advised the contemplated opening up of a wall requires a permit, hazmat remittance requires a permit (for the lead based paint alleged to be in the woodwork and/or any asbestos) and the electrical permits were not in place. He said they have 3 egresses and only one window would be boarded up.

The landlord said there is insufficient evidence of what contractors told the tenants. He said his contractors get the necessary permits and the hazmat processes were done but the scope of the work expanded based on what they found in unit 3 which they renovated. He said he had the proper permit for windows and kitchens but he only intended to do the windows at first and a permit was not required for that. He already had the electrical permits but only intended to do the windows. He said the tenants agreed with him by email that the process would take more than 4 weeks and possibly 2 months but an agreement could not be reached. The tenants emphasized their ability and willingness to vacate their units with their belongings for an extended period and to pay rent on the units during this time and to waive their rights to any compensation for this.

On the issue of good faith, the landlord emphasized that the tenants are good tenants. However, they said they had been renters themselves and suffered in units that were not maintained and had mold. They bought this heritage building and want to do the renovations required to make it a safe and comfortable place to live while observing the heritage guidelines imposed by the city. They believe the units have to be vacant for these renovations to take place and the timing is too uncertain to be able to make an agreement with the tenants on this.

Analysis:

Section 49(6) of the Act states that a landlord may end the tenancy if he has all the permits and approvals required by law and intends in good faith to (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I find the main issue in this case is whether the landlord in good faith intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant raised the issue of good faith and said the landlord is just using this to evict tenants and raise rents. Residential Policy Guideline 3 defines good faith as an abstract quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. I find the weight of the evidence is that the landlord is not acting in bad faith in ending this tenancy. I find they honestly intend to do a substantial renovation as evidenced by the work description and contract and the fact that they have done one other unit already in like manner. For the same reasons, I find no evidence that the tenants are being targeted. Regarding the email negotiations provided in evidence by the tenants, I find the landlord had recently purchased the building and understood they had to replace heritage windows partially funded by a grant and it was in this context the negotiations took place to possibly

obtain a higher rent. I find it credible that as they undertook renovation of one vacant unit and inspected the subject units, they realized that a prolonged period was required to replace and restore windows and much more work was required in these old units. I find their evidence credible that they were acting in good faith when they served the Notices to End Tenancy.

The issue remains whether or not the manner of the renovation of the rental unit requires the rental unit to be vacant. Residential Policy Guideline 2: D notes

D. RENOVATIONS OR REPAIRS (highlights by me)

In Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 (see also Baumann v. Aarti Investments Ltd., 2018 BCSC 636), the BC Supreme Court found there were three requirements to end a tenancy for renovations or repairs:

- 1. The landlord must have the necessary permits;*
- 2. The landlord must intend, in good faith, to renovate the rental unit; and*
- 3. The renovations or repairs require the rental unit to be vacant.*

In order for the third requirement to be met:

a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and

b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

In considering this third requirement, an arbitrator must determine first whether the unit needs to be empty (i.e. unfurnished and uninhabited) for the renovations to take place, and second, whether the required emptiness can only be achieved by ending the tenancy. A landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work.

If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.

In other words, section 49 (6) does not allow a landlord to end a tenancy for the purpose of renovations or repairs if any of the following circumstances apply:

- the landlord does not have all necessary permits and approvals required by law;*
- the landlord is not acting in good faith;*
- the renovations or repairs do not require the unit to be empty (regardless of whether it would be easier or more economical to conduct the renovations or repairs if the unit were empty); or*

• it is possible to carry out the renovations or repairs without ending the tenancy (i.e. if the tenant is willing to temporarily empty and vacate the unit during the renovations or repairs, and then move back in once they are complete).

I find as fact that Notice to End Tenancy was served to only restore and replace heritage windows and do electrical work for which the landlord already had a permit. The evidence is that the landlord found they needed to do more extensive work after that such as kitchens and bathrooms and removing a half wall. Judge Williamson pointed out in *Berry*, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place". In that case, the arbitrator had found that the unit only had to be empty for three days and that the tenants were willing to vacate for the three days.

In this case, I find as a practical matter that the tenants' units have to be vacant for at least two months in order for the renovations contemplated on the Notice to End Tenancy to proceed, that is for window restoration and replacement and electrical upgrading. However I find in this case, the tenants have expressed their willingness to empty of belongings and vacate the unit during the renovations and repairs and then move back in once they are completed. I find they are willing to continue to pay rent and waive any right or claim to damages connected with the renovations as they want to preserve their tenancies in this building. I confirmed with all the tenants several times that this was their agreements. One unit said they would put their furniture in storage and another unit said they might be able to rely on relatives. Based on this evidence, I find it is not necessary to terminate the tenancies in order for the units to be emptied and renovations to take place.

As the evidence is that the Notice to End Tenancy was served for window replacement and electrical upgrades, I note the landlord is not obligated to do further renovations as outlined in the hearing but may do them if time permits and they are economically viable.

Conclusion:

I set aside and cancel the Notices to End Tenancy dated October 25, 2018 to be effective February 28, 2019 for both units 1 and 4. The tenancies are continued. I find the tenants entitled to recover their filing fee as they were successful.

I HEREBY ORDER the tenants to vacate the properties and empty them of furniture for 60 to 90 days as required for the renovations to take place. The 60 to

90 day timeline will commence after the landlord gives two weeks notice of commencement of the work.

I HEREBY ORDER that the tenants may recover their filing fee by deducting \$100 off their rent for one month for each of units 1 and 4.

To give effect to AGREEMENT by the Tenants in the hearing, I hereby order the tenants to continue to pay their rent as determined in October 2018 to the landlord during the renovations and that they waive all claims for compensation from the landlord which might arise due to the 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: January 08, 2019

Residential Tenancy Branch