Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRYPHON 6128 CORPORATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, LRE, OLC, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on November 30, 2018. The tenant sought the following remedies:

1. an order cancelling a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice"), pursuant to section 49(8) of the Act;
2. an order suspending or setting conditions on the landlord's right to enter the rental unit under section 29 of the Act, pursuant to section 70 of the Act;
3. an order for the landlord to comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreement, pursuant to section 62 of the Act; and,
4. an order for recovery of the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on January 15, 2019 and the tenant and the landlord's legal counsel attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the preliminary issue, and to the issues of this application are considered in my decision.

Preliminary Issue: The Notice

In reviewing the tenant's documentary evidence, and the landlord's legal counsel's correspondence, both submitted in advance of the hearing, it appeared that the "Notice" for which the tenant brought his application seeking an order to cancel was a two-page mutual agreement to end tenancy.

I noted that the agreement did not contain any terms or conditions by which there would be repercussions if the tenant failed to sign the agreement. I explained to the tenant that because the landlord had not issued a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit, and because the agreement did not contain language that is used in a four month notice, that there was no reason why his application was necessary.

I further explained that if he chose not to sign the mutual agreement to end the tenancy then the agreement would have no effect on the status of the tenancy. In other words, the tenancy will continue until he either signs the agreement, or, until the landlord choses to issue a proper notice to end the tenancy under the Act.

The tenant acknowledged his understanding of my explanation.

Given the above, I dismiss this aspect of the tenant's application without leave to reapply.

I further dismiss the relief sought in respect of an order for the landlord to comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreement, as the tenant described this aspect of his application to be linked to the mutual agreement to end the tenancy document.

Issues to be Decided

1. Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

2. Is the tenant entitled to an order for compensation for recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenant has lived in the rental unit, a 5-bedroom home, since 2003. He is the sole tenant in the home, but “sublets” to a few other people, each of whom have their own bedroom. The other people appear to be roommates or other occupants not on the tenancy, and not sublet tenants under the Act.

The current landlord, which took over from the previous landlord in 2018, wishes to conduct asbestos testing within the home. The tenant testified that he is opposed to the landlord’s wish to access the home for this purpose primarily on the basis that (a) each person has their own schedule and it would be disruptive to these schedules for asbestos technicians to come into the home, (b) it is an “intuitive health concern” with the technicians “drilling holes all over the place in hazmat suits,” (c) he does not have keys to all of his sublet roommates’ bedrooms, and this would cause testing issues for these bedrooms, and (d) does not believe that the testing is necessary.

Landlord’s counsel submitted that he “doesn’t see any reason why an order [would] be made” when it is the landlord’s legal right under the Act to enter the rental unit for any reason, including to conduct asbestos testing. He further argued that the tenant’s submission as to the various individuals’ work schedules should not be accepted, as it is irrelevant to, and has no effect on, the landlord’s right to enter the rental unit.

He briefly spoke about the landlord’s concerns with respect to the tenant not having keys to some of the bedrooms, and that the landlord ought to and would have access to those bedrooms if it needed to.

Counsel further submitted that if the landlord intends to conduct the asbestos testing that they would comply with the Act and would give the tenant adequate notice.

Finally, counsel submitted that the landlord does not agree to pay the filing fee because the orders sought in this application are unnecessary.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 70(1) of the Act states that an arbitrator, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29.

Section 29 of the Act reads as follows:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In this case, I do not find that the tenant's argument, as to why an order should be issued restricting the landlord's right to enter the rental unit, convincing. Section 29(1)(b) of the Act sets out a commonly-used method by which a landlord obtains the legal right to enter a rental unit. With sufficient and proper notice, the landlord may enter the rental unit for a purpose which "must be reasonable." In my opinion, the landlord's intended purpose for conducting asbestos testing is reasonable.

While the parties did not testify as to the long-term intentions of the landlord, it appeared from the correspondence submitted into evidence by the parties that the landlord, at some future point, intends to, or may, conduct renovations on the property. The existence of asbestos, common in property constructed before 1985, can cause hazardous health conditions when renovations are undertaken.

Building material containing asbestos can be disturbed and released into the air when renovations are done, including drilling, cutting, sawing, and other activities. Thus, asbestos testing is often done before any renovations get underway. For this reason, I

find the landlord's intended reason to enter the rental unit is reasonable. And, while the testing will undoubtedly cause inconveniences to the tenant and his fellow occupants, for the reasons set out above the landlord has the legal right to enter the rental unit and is required to provide proper notice under section 29 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim that an order be issued under section 70 of the Act.

As the tenant was unsuccessful in his application I decline to award recovery of the filing fee.

As an aside, I would caution the tenant that the landlord does have the right to access the entire house and that the tenant should be providing copies of any keys restricting the landlord's access to the landlord. Further, under the Act, the landlord may enter the rental unit with proper notice under the Act and that the tenant and the other occupants do not need to be in the rental unit when the landlord attends to do the testing.

Conclusion

I dismiss the tenant's application without 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 Act.

Dated: January 18, 2019

Residential Tenancy Branch