Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on December 18, 2018. The tenants seek the following remedies:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49(8) of the Act;
2. an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), pursuant to section 49(8) of the Act;
3. more time to dispute the Two Month Notice to End Tenancy for Landlord's Use of Property after the time to apply for dispute resolution has expired, pursuant to section 66 of the Act;
4. an order that the landlord comply with the Act, pursuant to section 62 of the Act; and,
5. an order for compensation for the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was convened on January 31, 2019 and the landlord and the tenant (E.M.) attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to service.

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

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issues: The Two Month Notice and More Time to File for Dispute

The landlord issued the Two Month Notice on December 1, 2018. In reviewing the Two Month Notice, however, the landlord had used an invalid form of notice in that the purpose for ending the tenancy was to perform renovations. The Two Month Notice was on form #RTB-32 (2016/04), which is no longer valid for ending a tenancy on this basis. As such, I find that the Two Month Notice issued on December 1, 2018 to be void and of no force or effect.

The tenants applied for dispute resolution on December 18, 2018, which, if the Two Month Notice was valid, would have been too late. A Two Month Notice requires a tenant to apply for dispute resolution within 15 days of receiving the notice. However, given that the Two Month Notice in this case was invalid, I do not find that the tenants applied late. As such, I will only consider the merits of the Four Month Notice in respect of the tenants' application.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Four Month Notice?
2. If they are not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to an order that the landlord comply with the Act?
4. Are the tenants entitled to an order for compensation for the filing fee?

Background and Evidence

The landlord testified that it "has been a long time" to bring the property up to date, and that the purpose for his issuing the Four Month Notice is because he needs to install new floors, new cabinets, a new bathroom, doors, painting, and "quite a bit of work." The property was built around forty years ago and needs major renovations.

The landlord testified and confirmed that he personally issued the Four Month Notice on the tenants, in person, on December 26, 2018. A copy of the Four Month Notice was submitted into evidence by the tenants (as was a copy of the Two Month Notice). Page

2 of the Four Month Notice indicates that the tenancy is ending because the landlord is going to "perform renovations or repairs that are so extensive that the rental unit must be vacant." The planned work and details of work section of the Four Month Notice includes the following information: "full kitchen & bathroom reno's new flooring/tiles new doors new paint new lighting fixtures new cabnets [*sic*], counter tops." It also indicates that "no permits and approvals are required by law to do this work."

The tenant testified and confirmed that, as the landlord stated, the tenants have lived in the rental unit for more than 12 years and that the current monthly rent is $1,480.00. He commented that the renovations would not be necessary if the landlord done the required yearly maintenance on the property. The tenant argued that the landlord "just wants to evict us to raise the rent." The property is a duplex and the tenants live in the upstairs part, which is a three-bedroom rental unit.

In his final submissions, the tenant testified that the circuit breakers keep shutting off because there are too many ovens in the property. The tenants do not have access to the breaker box and have to call the downstairs tenants every time the breaker goes off. By his estimation, there are at least 6 ovens. The landlord in rebuttal disputed this figure and stated that there are only 2 ovens ("stoves") and a toaster.

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.

Where a tenant applies to dispute a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49(6)(b) of the Act, under which the landlord issued the Notice, states 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 do any of the following: [. . .] renovate or repair the rental unit in a manner that requires the rental unit to be vacant [. . .]

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the Supreme Court of British Columbia found that there are 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.

And, for the third requirement to be met, the renovations or repairs must be so extensive that they require the unit to be empty for them to take place, and the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

Residential Tenancy Policy Guideline 2. Ending a Tenancy: Landlord's Use of Property, provides additional clarification on this third requirement, stating that

> 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 this case, the landlord testified as to the extensive renovations that he would like to undertake. However, he provided no oral or documentary evidence, and no explanation, as to why or how the planned renovations or repairs are so extensive that the rental unit must be vacant. Simply providing a lengthy list of renovations in and of itself is insufficient to establish that the tenants need to literally move out of the rental unit.

While the tenant did not make any submissions or argument in respect of this aspect of the Four Month Notice, it is incumbent upon the landlord to establish that the rental unit must be empty in order for these renovations to occur. Indeed, renovations such as new doors, new cabinets, and painting are not activities that necessitate a tenant's eviction. In respect of the other renovations noted, the landlord did not explain or provide any

evidence as to why the tenants could not remain in the rental unit while these renovations are underway.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was based.

As such, the landlord's Four Month Notice, dated December 26, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

As the tenant did not provide any submissions or testimony as to why he is entitled to an order requiring the landlord to comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreement, I dismiss that aspect of their application with leave to reapply.

I grant the tenants compensation in the amount of $100.00 for the filing fee. In full satisfaction of this award I order that the tenants may make a one-time deduction from their rent for March 2019 in the amount of $100.00.

Conclusion

I hereby cancel the Four Month Notice dated December 26, 2018, which is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I hereby grant the tenants compensation in the amount of $100.00 for the filing fee.

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 31, 2019

Residential Tenancy Branch