Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49.

The tenant and the landlords (the "landlord") appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the notice of dispute resolution package, along with her evidence, to the landlord personally, by hand, on January 15, 2018. The landlord confirmed receipt of the notice of dispute resolution package and tenant's evidence. Therefore, I find that the landlord has been duly served with the notice of dispute resolution package and the tenant's evidence, in accordance with section 89 of the *Act*.

The tenant confirmed receipt of the landlord's evidence.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. If the tenant's application is dismissed and the landlords' Notice to End Tenancy is upheld, are the landlords entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

The parties agreed that the tenancy began during some period in April 2001, although the parties could not recall the exact date on which the tenancy began. The parties provided that a written tenancy agreement was not drafted and that the tenancy was created pursuant to an oral agreement entered into by the tenant and the original landlord. The current monthly rent is $1,071.89, which is due on the first day of each month. A security deposit of $325.00 was paid by the tenant to the landlord, which continues to be held by the current landlord.

The subject rental property is one side of a duplex unit. The duplex contains two units, each of which contains an upper and lower floor. The tenant rents both the upper and lower floors of one side of the duplex.

The landlord issued to the tenant a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice"), dated December 31, 2018, with an effective date of April 30, 2019.

The landlord testified that the Notice was served to the tenant by hand on December 31, 2018, and the tenant acknowledged personally receiving the Notice on that date from the landlord. The Notice was entered into evidence.

The Notice states that the landlord is ending the tenancy because the landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Notice states that no permits and approvals are required by law to do this work.

The Notice provided the following description of the work the landlord plans to do:

- Replace all flooring and moldings
- Replace old windows
- Seal all walls due to smoke damage and repaint entire walls and ceilings
- Remove and replace all cupboards in kitchen
- Remove and replace cupboards, counters, sinks, toilets, in bathrooms
- Install new heating and cooling system.

[reproduced as written]

The landlord provided testimony to provide additional details regarding the extent and nature of the planned renovations and repairs. The landlord provided that the rental unit requires smoke remediation and that the unit needs to be, as the landlord stated, "gutted and smoke-sealed", so as to prevent the possibility of smoke emanating to the unit next door, which is separated by a firewall. The landlord testified that in order to do so, the drywall and insulation throughout the rental would need to be removed, such that the rental unit would have to be vacant.

The landlord testified that a new heating and cooling system will be installed, which will require sections of the walls to be cut open to install electric wiring and lines on both levels of the rental unit. The landlord also provided that some portions of the ceiling would have to be cut open to permit for installation of a new air intake system.

The landlord also provided that he plans to undertake renovations and repairs to plumbing systems as well. The landlord provided that the hot water tank would be replaced, and that the shut-off valve would have to be replaced. The landlord also stated that some piping might also have to be either repaired or replaced. The landlord provided that some toilets and sinks would be replaced.

The landlord provided as evidence a spreadsheet which also lists the description of work to be done, as well as an estimated total cost for the work to be done. The spreadsheet provided the following description of work to be undertaken:

- remove all flooring, baseboards,casings, doors and bifolds

- remove kitchen and bathroom cabinets, counters, sinks and storage units
- remove blinds and drapes, light fixtures, switch covers etc.
- repair drywall cutouts for new hvac heating, cooling system and fans
- remove and replace windows
- smoke seal walls, ceiling and closets
- paint walls and ceiling 2 coats
- install new flooring
- install and paint new doors, baseboard, casings and caulk
- install new kitchen cabinets, countertops, vanities and sinks

[reproduced as written]

The landlord testified that for some aspects of the planned renovations and repairs, such as the work to be undertaken with respect to the electric and plumbing systems, permits from the local municipal government would be required. Although providing testimony that permits would be required for some of the planned work, the landlord did not provide any such permits.

The landlord testified that for some of the planned repairs, permits would not be required from the local municipal government.

The landlord provided that he consulted with the local municipal government with respect to the issue of whether permits would be required and when and if they would be issued. The landlord testified that the municipal government advised him that since he did not have a concrete date as to when the rental unit would be vacant, and when the planned work would be scheduled to commence, he was advised to return to revisit the issue of being granted the permits once the proceeding before the Residential Tenancy Branch resulted in a decision that would provide clarity around whether the landlord would be able to obtain vacant possession of the subject rental property.

The landlord testified that the nature of the work is such that it cannot be undertaken if the unit is occupied and that the entire project would require vacant possession of the subject rental property.

The tenant disputed the bulk of the landlord's testimony. The tenant provided that the landlord was not acting in good faith. The tenant asserted that the landlord may have an ulterior motive for serving the Notice. The tenant testified that the landlord attempted to increase the rent on four occasions within a six-month period after purchasing the duplex. The tenant testified that her belief is that the landlord may simply offer the

rental unit for rent at a significantly higher rent rate after the renovations are completed. The tenant testified that she wishes to dispute the Notice and continue her tenancy under the same terms currently in place.

Analysis

Section 49(6) of the *Act* allows a landlord to end a tenancy by giving a Four Month Notice to end the tenancy if, among other reasons, the the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

In accordance with subsection 49(8)(b) of the *Act*, the tenant must file an application for dispute resolution within 30 days of receiving the Four Month Notice. In this case, the tenant received the Notice on December 31, 2018. The tenant filed her application for dispute resolution on January 11, 2019. Accordingly, the tenant filed within the 30 day limit provided under the *Act*.

Although this was the tenant's application, the burden of proof in such matters to end a tenancy pursuant to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit rests with the landlord. Where a tenant applies to dispute a Four Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Four Month Notice is based.

Section 49(6)(b) of the *Act*, states:

> 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2 "Ending a Tenancy: Landlord's Use of Property" ("Policy Guideline 2") provides guidelines which capture the essence of the legislative framework and intention with respect to a landlord's ability to issue a 4 Month Notice pursuant to section 49(6)(b) of the Act.

With respect to the issue of permits, "Policy Guideline 2") provides, in part, the following:

> Some local governments may not issue permits unless a rental unit is already vacant. They may require certain things to be done first that may render the building uninhabitable or may involve withdrawing essential services and facilities. These requirements may include providing a clearance report from an

industrial hygienist confirming whether hazardous materials, if encountered, have been safely removed and ensuring that utility services (gas, power, water, sewer) have been severed and constructing a safety fence around the site.

If this is the case, **landlords may be able to obtain a conditional demolition permit in an effort to meet the requirements of the Act while still recognizing the municipality's preconditions for a final permit.** An arbitrator may consider conditional permits when determining the validity of a notice to end tenancy.

If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government. Local governments may have information about when permits or approvals are required on their website. The Residential Tenancy Branch is unable to advise people about the specifics of permit requirements. Landlords should check with the permit department in the municipality or regional district in which the rental unit is located to determine the requirements.

[my emphasis added]

The law regarding section 49(6)(b) is clarified in the following excerpt under Section D of Policy Guideline 2:

D. RENOVATIONS OR REPAIRS

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).*

In the matter before me, the landlord provided affirmed testimony stating that some of the planned work would require permits, such as work involving plumbing and electrical systems. However, despite testifying that permits for such work would be required, the landlord did not provide any such permits (or conditional permits).

Policy Guideline 2 provides that if the nature of the planned work does not require permits, the landlord should obtain written proof from the local municipal government. I find that the landlord did not provide any such documentary proof with respect to the planned work which does not require permits.

The landlord testified that he consulted with a representative of the local municipal government with respect to the issue of required permits, and that he was instructed to revisit the issue once the pending matter before the Residential Tenancy Branch resulted in a decision that would provide clarity as to whether (and when) the landlord would be able to obtain vacant possession to be in a position to undertake the planned

work. However, I find that the foregoing does not exempt the landlord from adhering to the requirements of Policy Guideline 2 and section 49(6) of the Act.

I find that by not establishing that he has the necessary permits and approvals required by law (or conditional permits or written proof from the municipal government if the work does not require a permit) the landlord has failed to adhere to the requirements provided under section 49(6)(b) of the *Act* and section D of Policy Guideline 2 which govern the landlord's ability to issue a Four Month Notice. Therefore, I find that it is not open to the landlord to issue a Four Month Notice pursuant to section 49(6)(b) of the *Act.*

Based on the foregoing, I grant the tenant's application to cancel the Four Month Notice dated December 31, 2018 and determine that it is of no force and effect.

As I have found that the Four Month Notice is cancelled, the landlord is not entitled to an Order of Possession for Demolition, Renovation, Repair or Conversion of Rental Unit.

Conclusion

Based on the above, I order the Four Month Notice, December 31, 2018, is cancelled and is of no force or effect. The tenancy will continue until it is ended in accordance with the *Act*.

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: February 27, 2019

Residential Tenancy Branch