



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing, reconvened from an earlier hearing date, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use (the "4 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by advocates. The landlord was represented by their family member (the "landlord") and legal counsel.

As both parties were present service of all documents was confirmed. The parties each confirmed receipt of all documents including the 4 Month Notice, the tenant's application for dispute resolution and all pieces of evidence. Based on the testimonies I find that the parties were served with all materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This periodic tenancy originally began in July 2011. The current monthly rent is \$944.00 payable on the first of each month. The rental unit is a basement suite in a detached building. The upstairs suite is occupied by the named landlord. The rental property also includes a laneway house currently occupied by the named landlord's family member, the adult child who attended the hearing and their spouse.

The landlord issued a 4 Month Notice to End Tenancy for Repairs dated January 19, 2019 (the "4 Month Notice"). The reason provided on the 4 Month Notice for this tenancy to end is that the landlord will perform renovations or repairs that are so extensive that the rental unit must be vacant. The landlord stated on the 4 Month Notice that they have all necessary permits for the work contemplated.

The landlord gave evidence that the work will include removing insulation from the walls, installing new flooring, installing new appliances and countertops in the kitchen and bathroom, rewiring, replacing the piping in the suite, and repainting the walls. The landlord submitted into documentary evidence correspondence with their contractors and the municipality as well as diagrams of the work contemplated and permits issued.

The landlord testified that the scope of work contemplated requires vacant possession of the rental unit. The landlord further stated that they intend to reside in the rental unit after the renovations are completed and thus allowing the tenant to return to the suite is not possible. The landlord said that they wish to reside in the same building as their parents as they are expecting a child and the family can provide assistance in caring for the child. The landlord testified that they intend to rent out the laneway house in which they currently reside. The landlord submitted into documentary evidence online postings advertising the laneway home as available. The landlord submits that the laneway home can be rented at a higher monthly rate than the basement suite, offsetting some of the costs of renovations.

The landlord acknowledged that there have been several other Notices to End Tenancy issued on the tenant and corresponding actions before this Branch under the file numbers on the first page of this decision. The landlord explained the circumstances surrounding each of the earlier Notices. The landlord testified that the present Notice and plan for renovations are unrelated to the earlier Notices which related to non-payment of rent by the tenant.

The tenant submits that the history of failed Notices to End Tenancy issued in the past puts the landlord's good faith intention into question. The tenant testified that they are willing to accommodate the landlord's plans for renovations by temporarily vacating the rental unit and resuming the tenancy after the work has been completed.

Analysis

When a tenant disputes a Notice to End Tenancy the burden of proof is on the landlord. The landlord must show, on a balance of probabilities, that the tenancy should end for the reason stated on the Notice.

Section 49(6) of the Act provides that:

49 (6) 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:

...

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The landlord issued the 4 Month Notice indicating that they have all necessary permits and approvals and that they will be performing renovations and repairs that are so extensive that the rental unit must be vacant.

Residential Tenancy Policy Guideline number 2 contemplates the elements necessary for a landlord to end a tenancy for renovations or repairs and states:

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.

The Policy Guideline continues to say that:

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).

Emphasis added

Based on the testimony and the documentary evidence submitted by the landlord, I am satisfied that the landlord intends to perform work on the rental unit and the scope of work contemplated requires the suite to be vacant to perform the work. The landlord has submitted municipal permits, quotations and work plans which I find reasonably establish the landlord's intent to perform major renovations. I accept the landlord's submission that the nature of the work described, including major rewiring of electricity in the suite, installing new flooring throughout and plumbing updates will render the rental suite uninhabitable during the process.

However, the tenant has given evidence that they are willing to temporarily empty the rental suite during the work and move back in once the renovations are complete. The landlord testified that it will not be possible for the tenant to return to the suite as the landlord intends to occupy the suite themselves. The tenant submits that the landlord's intention to occupy the rental unit establishes that the landlord's issuance of the 4 Month Notice was not done in good faith.

The landlord submits that the intention to occupy the rental unit is not an ulterior motive, but the underlying reason why the renovations will be completed. The landlord says that renovations or repairs intrinsically have the purpose of maintaining or improving property owned by the landlord and therefore the fact that the landlord will experience a benefit from the renovations should not establish an absence of good faith.

Policy Guideline 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive.

The tenant has raised the good faith intention of the landlord which I find has some basis. While I accept that the landlord intends to perform major renovations to the rental unit that will require the suite to be vacant during the work, I find that the nature of the renovations does not establish that this tenancy must permanently end. The tenant has stated that they are able to make accommodations to vacate the rental suite during the work and return when the work has been completed. The landlord's refusal of the tenant's offer stems not from the renovations and repairs to be done, but due to the landlord's intention to occupy the rental unit themselves.

The landlord's intention to occupy the rental unit is reason to end the tenancy that is separate and distinct from the renovations. I do not find the landlord's submission that the renovations and intention to occupy the rental unit to be linked to be persuasive.

Based on the submissions of the landlord I find that the reason for this tenancy to end is not the renovations but the landlord's intention to occupy the suite. In an instance where a landlord has issued a 4 Month Notice stating that the tenancy must end due to repairs and renovations where in fact the true purpose is that the landlord intends to occupy the rental unit, I find that there is a discrepancy between the landlord's motivation and the 4 Month Notice.

While I find that the landlord was forthright in their testimony and I find there is no evidence of malice, I find that the reason provided on the 4 Month Notice is not the honest and complete reason the landlord believes this tenancy ought to end.

I find that while the landlord may intend to perform renovations and repairs as stated on the 4 Month Notice, that there may be additional reasons which fueled the issuance of the Notice. I find that in an instance where the tenant is willing to vacate the rental suite to allow the renovations or repairs, there is insufficient evidence that the tenancy must end.

I further find that the good faith argument has some merit as I find that the reason provided by the landlord for this tenancy to end is not reflected in the 4 Month Notice issued. For these reasons the 4 Month Notice of January 19, 2019 is cancelled. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 4 Month Notice is allowed. The 4 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to 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: April 24, 2019

Residential Tenancy Branch