



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY COMPANY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FFT

Introduction:

The applicant tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. on May 30, 2019. The respondent landlord attended the hearing and gave sworn testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I find that the tenant was served personally with the 4 Month Notice to End Tenancy and the landlord agreed they received the Application for Dispute Resolution by registered mail. I find the documents were legally served according to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End tenancy dated March 15, 2019 to be effective July 31, 2019.

Issues:

Is the tenant entitled to any relief? Does the rental unit need to be vacant in order for the landlord to do renovations?

Background and Evidence:

The landlord stated on the Notice the reason for ending the tenancy is that the landlord will perform renovations or repairs that are so extensive that the rental unit must be vacant. The tenant alleges in their Application the landlord is not acting in good faith for the units do not need renovation but only cosmetic touches and the main reason the landlord is renovating is to raise rents. They state they could remain during the renovations.

The tenant did not attend the hearing. The landlord said that after the previous decision issued on May 7, 2019, he believed the tenants in the other 3 units in the property decided not to attend their scheduled hearings. He thinks they initially suspected the good faith of the landlord but decided not to pursue it after the issue was considered in the first hearing.

An issue in dispute is whether the rental unit needs to be vacant in order for the landlord to do the contemplated renovations. In the first hearing on this building which I heard and decided on May 7, 2019, the landlord had his general contractor testify as to the extent of the renovations and the need for the units to be vacant. He also provided a list of the proposed renovations as an addendum to the Notice to End Tenancy. I have considered all of the submitted evidence on this building. The proposed renovations are as follows:

On the exterior, the building will have new vinyl windows, new windows, new patio doors, decks with new vinyl and hand railing, new exterior fascia and soffit, yard upgrade with new paving, concrete barriers, parking lines and wood fence repair.

In the interior, the common entry floor and stair steps will be done.

New plumbing with new hot water tanks

New laundry including washers and dryers

New electric baseboard heaters

All ceilings, walls and woodwork painted

Drywall: patch and repair but it seems some drywall may contain asbestos and this would have to be all removed by specialists and this would extend the timeline for another 6-8 weeks. The building dates from the 1980s so asbestos seems likely.

All new doors, bi-folds and casings

New laminate flooring

Total washroom removal and upgrade; also kitchen

All new lighting

New wooden stair railing & spindles

Removal of old boiler system including baseboards and plumbing

Mold has also been found and some remediation necessary

New hot water tanks and new copper plumbing (now multiple code violations with waterlines running on exterior of apartments through common areas).

I have carefully considered all of the evidence although only the evidence relevant to my decision is referenced.

Analysis:

Section 49(6) of the Act states that a landlord may end the tenancy if they are performing renovations or repairs that are so extensive that the rental unit must be vacant. Two cases relevant to the point are *Berry v. BC* [2007] B.C.J. No 368, 2007 BCSC 257, and *Allman v. Amacon Property Management Services Inc.*[2006] B.C.J. No. 1022, 2006 BCSC 725 (which said that cost effectiveness should not be one of the criteria when deciding to end tenancies in the whole building vs. doing it unit by unit).

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. It notes the landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy and this might be documented by such items as a Notice to End Tenancy at other rental units, a government document permitting change (e.g. a building permit) and a contract for the work. I find the weight of the evidence is that the landlord is not acting in bad faith in ending this tenancy. I find he honestly intends to do a substantial renovation as evidenced by the work description and contractor's testimony. I find he has also issued Notices to End Tenancy to the other units in the building.

The issue remains whether or not the manner of the renovation of the rental unit requires the rental unit to be vacant. I find as fact the landlord decided on the manner of the renovation after consulting and engaging an experienced contractor and having two inspections done where the matter of asbestos was considered to be important due to the age of the building. Based on the evidence, I find as fact that the landlord is doing a substantial renovation to the subject unit and the whole building. I find that bathrooms and kitchens have to be removed and replaced, plumbing system and boilers have to be replaced, floors redone and drywall repaired or replaced. I find there is a good possibility that asbestos problems may exist in the drywall and other areas which would make it hazardous for tenants to be present during renovation. I find the criteria in section 49 of the Act is not whether the building needs renovation but whether the landlord intends to renovate in a manner that requires the unit to be vacant.

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 tenant's unit has to be vacant for at least two months and possibly for a further indefinite time for asbestos to be removed safely in order for the renovations on it to proceed. In this case, I find as fact that the extensive renovations are only possible if the unit is unfurnished and uninhabited.

I also distinguish this case from the *Amacon* case. In the *Amacon* case, the arbitrator found as fact that it was possible to renovate the suites while occupied. However, I find on the evidence in this case that it is not possible to renovate the subject suite while it is occupied because of the nature and extent of the intended renovation.

I note the tenant is entitled to the right of first refusal pursuant to the Act after the renovation is completed.

Conclusion:

I find on the facts that the landlord is acting in good faith and the manner of their intended renovation requires the subject unit to be vacant. I dismiss the tenant's application to set aside the notice and the tenant's request to recover the \$100.00 filing fee paid for this application.

As the tenant is unsuccessful, I grant the landlord's request for an Order of Possession pursuant to section 55 of the Act. The effective date on the Notice to End Tenancy was July 31, 2019 and an Order of Possession is issued effective July 31, 2019.

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: May 30, 2019

Residential Tenancy Branch