



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC – 4M, FFT

Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 4 Month Notices to End Tenancy for Demolition, Renovation, or Conversion to Another Use ("4 Month Notices"), pursuant to section 49; and
- authorization to recover the filing fee for their applications from the landlords pursuant to section 72.

The landlords were represented in this hearing by their agents DM and CD. The tenants, who filed 15 similar applications for dispute resolution, attended the hearing, with the exception of two tenants who were unable to attend. All the tenants were represented by their advocate LM in this hearing. Both parties were given a full opportunity to be heard, to present evidence and to make submissions.

The landlords' agents confirmed receipt of the tenants' dispute resolution hearing packages. I am satisfied that the landlords were served with the tenants' applications for dispute resolution in accordance with section 89 of the *Act*. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The landlords served the tenants with a 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use ("4 Month Notice"), dated February 22, 2019 by way of registered mail on the same date. The tenants confirmed receipt of the 4 Month Notices. In accordance with sections 88 and 90 of the *Act*, I find all the tenants deemed served with the 4 Month Notices on February 27, 2019, five days after mailing.

Issues(s) to be Decided

Should the landlords' 4 Month Notices be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony of the parties and witnesses, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' applications and my findings are set out below.

15 applications were made by the tenants in this 26 unit complex to dispute the 4 Month Notices issued to them by the landlords. Of the 26 units, 11 were vacant at the time of the hearing. The landlords issued the 4 Month Notices for the following reason:

- the Landlord is going to perform repairs or renovations to the rental units that are so extensive that it requires the rental units to be vacant. The landlord has obtained all the necessary permits and approvals required by law to do this work.

The landlords provided the following background for why they had decided to issue the 4 Month Notices. The landlords' agents testified in this hearing that the landlords had purchased the property in July of 2018. The 3 storey walk-up was built in 1968, and the landlords started to perform recommended repairs in the building as set out in a professional building inspection report completed on February 22, 2016 on behalf of the previous owners. The landlords provided relevant sections of a building inspection report as part of their evidentiary materials. The report provided information on several issues in the building including water ingress issues in the basement, water leaks in the garage, condensation and excessive mold issues around the windows, and the need to replace the copper plumbing in the building. The landlords started to perform repairs to the building. On December 18, 2018 the landlords were issued a stop work order by the city bylaw office. The stop work order, which was included in the evidence package, required that the landlords stop the renovations and repairs as the work was in violation of plumbing and building bylaws, and required the landlords to obtain the proper permits to continue the alterations and asbestos removal. On December 21, 2018 the landlords obtained a permit for them to make interior alterations to the plumbing in order to re-pipe all 26 units.

While performing the repairs, the contractors discovered further issues, which included dry rot in major beams. The landlords contacted an architect and a structural engineer.

On February 12, 2019 the landlords obtained a full plumbing permit, and issued the 4 Month Notices on February 22, 2019 as the professionals they have hired considered it unsafe for occupants to remain in their rental units while the repairs were being made. The landlords' agents testified that they did not anticipate the extent of the repairs that would be required, which now required the units to be fully vacant. The landlords' agents testified that the original plan was to relocate the tenants. The landlords' agents confirmed in the hearing that they were in the process of obtaining more permits to complete the work required.

The landlords called several witnesses in the hearing. SW is a certified red seal carpenter, and was called an expert witness in this hearing. SW testified that he was gold seal certified in the Canadian construction industry, and has been a general contractor for 25 years. SW testified that he had performed work at many similar 3 storey walkups, and have managed entire projects. SW testified that his role in this building was to carry out the re-plumbing of this building. SW testified that the scope of work changed during the project with the discovery of deterioration of structural beams in between units. Combined with the amount of required asbestos abatement, SW deemed the building too unsafe to occupy as the work required the removal of fire separation. SW testified that occupants would not be protected in the case of a fire. Photos were included in the landlords' evidence showing the rot in one of the units. SW testified that safety and liability was an issue, and would affect the landlords' insurance.

SW was cross examined in the hearing by the tenants' advocate, and was asked to provide some details of the timeline to do this work. SW testified that it would take at least 1 month to deal with the structural aspect of the repairs, and due to sign-off and permit requirements, the project could take 8 to 12 months. SW confirmed that they have not inspected all the rental units yet, as they were still occupied. SW was also asked if it was necessary to require the entire building to be vacant, and he answered that it depends on the project, and the scope of work, which could expand. SW emphasized the extensiveness of this project due to the asbestos abatement required, and structural issues. SW confirmed that the landlords have applied for building and structural permits, and are in the process of obtaining the approvals. SW was asked to confirm whether the landlords were in possession of a structural permit, which was confirmed as negative at the time of the hearing.

The landlords also called LR as a witness in this hearing. LR is the project who is responsible for facilitating the renovations in all the rental units. LR confirmed that the landlords had applied for full building permits, and were awaiting approval of these

permits at the time of the hearing. LR was cross examined in the hearing by the tenants, and confirmed that the landlords have not had an opportunity to inspect every rental unit.

TE was also called a witness by the landlords in this hearing. TE is a professional engineer and structural engineer, and principal owner of his consulting business. TE testified that he was responsible for the redesign of each suite, and the supporting systems of each floor.

TE testified to the state of one of the units where the floor was exposed, and many rotten joists were found. TE testified that further investigation was required, and that the floor joists might require replacement as their state could compromise the entire structure of the building. TE testified that it was a safety issue for the tenants to remain, and that it would also make it very difficult for the contractors to perform repairs if the units were not vacant. Additionally, TE testified that increased construction cost was another issue if the tenants did not vacate.

TE also testified to the application process for permits. TE testified that the permits were applied for by the general contractor, and may take up to 8 weeks to review. TE confirmed that the permit obtained on December 21, 2018 was for re-piping, and required amendments. TE testified that now that the scope of work has changed, the landlords required more permits, and that the building must be vacant due to safety issues.

TE was cross examined in the hearing by the tenants, and confirmed that not all permits have been approved. TE testified that it would be more efficient to complete the repairs at the same time versus unit by unit, as it could take two to three weeks per unit.

The landlords' architect WR was called in this hearing, who has been practicing for 12 years. WR testified that he was contacted by the landlords on February 15, 2019 and asked for his opinion. WR was shown pictures, and his opinion was that permit the landlords had originally obtained was not adequate for the scope of work required as the landlord had discovered major structural issues.

WR testified that he had advised the landlords that they should proceed with a full building permit for full remediation, and undertook the task of putting together the documentation required to apply for full permits. WR testified that on April 3, 2019, an application was made for more permits, and a meeting was scheduled for the day after the hearing. WR testified that the original permit, although titled "building permit" was for

minor repairs, and a higher level of permitting was required to complete the repairs. WR testified that the scope of work that he had observed was not covered by the original permit due to the hazardous materials involved, and fire safety issues. WR testified that it was common for construction to be commenced without all the required permits, and his role was to provide assistance with advising on the proper process to follow, and issuing letters of assurance. The letters of assurance, WR testified, were a required part of the permit application process.

WR further testified that it was preferable for the buildings to completely vacant, and was a reasonable expectation due to issues with fire separation and hazardous materials. WR testified that the bylaws required 2 means of egress for occupants, which would not be possible due to the location of the exits in the building.

WR confirmed in cross examination that his observations and conclusions were made after being shown the issues in one of the units. His estimation of the timeline for completion of repairs ranged from six to 18 months, to two years. WR confirmed that the scope of work was still changing, and the timeline was not yet clear. WR also confirmed that not all the necessary permits have been obtained at the time of the hearing. When cross examined about whether it was necessary for all units to be vacant, WR testified that it was cost prohibitive to perform repairs on a per unit basis, and although possible, it was impractical.

JW also testified as a witness in this hearing for the landlords. JW has over 9 years as a project manager, and specializes in hazardous materials removal and abatement. JW works with property management companies, and has provided his services to both residential and commercial buildings.

JW testified to the levels of risk involved in the asbestos abatement, which was considered high risk for buildings with textured ceilings. JW testified that it would take two to three days per suite, and that the units could not be occupied during the abatement process. JW confirmed that a permit was not necessary for the asbestos abatement process. In cross examination, JW confirmed that he had not yet inspected all the suites in the building.

The tenants called AF as a witness, who is a red seal plumber. AF testified that he had inspected a couple of the rental units in the building, and believes that it would take four to five days to complete the repairs in each bathroom, and that 3 months would be considered excessive. AF further testified that kitchen repairs would take one day. AF testified that the work could be done with scheduled shutdowns.

The tenants also called AS as a witness, who has been in the renovation business for over twelve years, and has been a small business owner for one and a half years. AS testified that he works with sub trades, and has worked on the restoration of multi-unit buildings similar to this one. AF testified that he has worked in buildings where the units remained occupied, and testified that this was possible if everything was pre-arranged and ordered. AF testified that although it may be more efficient to complete work on unoccupied suites, it was still possible to do so without requiring them to be vacant. In cross examination AF confirmed that he does not personally do abatement, but works with subcontractors who do. AF was also cross examined what would happen in the case of only one exit, to which he replied that he would never fully block an exit.

The tenants request the cancellation of the 4 Month Notice as the landlords have failed to meet the requirements to end the tenancies on the grounds stated on the 4 Month Notice. The tenants submit that not all the necessary permits have been obtained at the time the 4 Month Notice was issued as it was undisputed that at the time of the hearing the landlords were awaiting approval for more permits. As an example, the tenants submit that one of the permits was issued on March 8, 2019, after the issuance of the 4 Month Notice.

Additionally the tenants submit that the underlying motivation behind these repairs was to increase revenue, which makes this a “renoviction”. The tenants believe that the issuance of the 4 Month Notice is the landlords’ way of bypassing the proper process for a rent increase, and therefore the 4 Month Notice does not meet the good faith requirements for the issuance of such a notice. The tenants submitted written evidence, which shows the building being advertised as having potential for increased rent following renovations. The tenants submit that the current rent, which range from \$805.00 to \$905.00 per month, paid by the tenants is significantly lower than market value which would be around \$2,200.00 to \$2,400.00 per month. The tenants feel that the landlords’ offer to find alternative accommodation for the tenants were not real offers, but rather attempts to re-direct business to their other properties at significantly higher rent.

Lastly, the tenants feel that the landlords have failed to establish that it was absolutely necessary for the units to be completely vacant in order to undertake the repairs. The tenants submitted that the landlords have not given a clear timeline as to how long the repairs would take, and the witnesses have confirmed that although preferable and perhaps more cost efficient, it was possible to undertake the repairs without the permanent end of these tenancies.

The landlords submitted that the 4 Month Notices were issued in good faith, and that is shown by their original offer to relocate each tenant. The landlords submitted that things changed only due to unforeseen circumstances that involve the safety of all occupants. The landlords testified that they had offered financial assistance to the tenants, and that the market rent was not as high as the tenants stated. The landlords testified that the average monthly rent was around \$1,600.00.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, 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: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

The tenants raised the question of the landlords’ true intentions in ending these tenancies. As the tenants raised doubt as to the landlords’ true intentions, the burden shifts to the landlords to establish that they do not have any other purpose to ending these tenancies.

The tenants testified that their monthly rent was substantially lower than the market rent, and the landlords’ true intention was to carry out a “renoviction”, a process by which the landlords would bypass the normal requirements to raise the rent by evicting the tenants under the guise of required renovations, and then re-rent the units at much higher rent. The tenants testified that no true accommodation has been made by the landlords to

relocate the tenants on a temporary basis even though there are 11 vacant units in the building, and the tenants have expressed their willingness to work with the landlords. I have considered the evidentiary materials submitted by both parties as well as the sworn testimony of the witnesses in this hearing, and I am satisfied with the landlords' explanation that the aging building requires maintenance and repairs, and the landlord is fulfilling its duty to do so as required by section 32 of the *Act* as stated below.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

RTB Policy Guideline #2 also states that a tenancy may only be ended for repairs or renovations if the landlord has met the burden of proof to show that the renovations or repairs can only be achieved if the tenancies are terminated. I find that the several of the landlords' own witnesses confirmed that it may be possible to complete the repairs without requiring the permanent vacancy of the rental units, but that it was not preferable or practical due to the cost in doing so. I accept the testimony of the landlords and their witnesses that the scope of the work has changed from when this project had begun, and may change as further work and investigation is done. I also accept the testimony of the landlords and their witnesses that it may not be financially feasible, nor safe, to undertake certain aspects of the repairs while the tenants remain in the building. I must emphasize, though, that RTB Policy Guideline #2 states that "a landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work". I accept the testimony of the landlords and their witnesses that the repairs may pose a safety risk to the occupants. However, the tenants expressed a keen willingness to move out temporarily to accommodate the repairs. It was also undisputed by both parties that there are 11 vacant units in the building, and possibly other alternatives, which would allow the tenants to temporarily vacate their homes. In light of the fact that the tenants have expressed willingness to accommodate the repairs by moving out temporarily, I am not satisfied that the landlords have established that the repairs are so extensive that the only option would be to permanently end these tenancies.

Lastly, RTB Policy Guideline #2 addresses the requirement of having all the permits in place before the 4 Month Notice is issued to the tenants.

B. PERMITS

When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.

I find that it is undisputed, as confirmed by the landlords' own witnesses in this hearing, that at the time of the hearing the landlords were still in the process of obtaining all the necessary permits to complete the repairs referenced in this hearing. I accept the testimony of the landlords and their witnesses that the scope of work has changed, and that the original permit obtained before the issuance of the 4 Month Notice is no longer adequate. I find that it was undisputed by both parties that the landlords have yet to obtain all the necessary permits to perform the repairs at the time of the hearing, or even at the time that the landlords served the tenants with the 4 Month Notices. As stated above, RTB Policy Guideline #2 requires that all the permits be acquired before the 4 Month Notice is even issued. I find that the landlords have not met the burden of proof to show that they had all the necessary permits and approvals required by law to perform the necessary repairs and renovations, nor have they demonstrated that it would be absolutely necessary for the tenants to permanently vacate their homes in order to undertake the repairs.

Accordingly, I allow the tenants' applications to cancel the 4 Month Notices. The landlords' 4 Month Notices, dated February 22, 2019, are hereby cancelled and of no force and effect. These tenancies are to continue until they are ended in accordance with the *Act*.

As the tenants were successful with their applications, I allow the tenants to recover the filing fees for their applications.

Conclusion

The tenants' applications to cancel the landlords' 4 Month Notices are allowed. The landlords' 4 Month Notices, dated February 22, 2019, are cancelled and are of no force or effect. The tenancies are to continue until ended in accordance with the *Act*.

I allow the tenants' applications to recover the filing fees for their applications. I allow the tenants to implement monetary awards of \$100.00 by reducing a future monthly rent payment by that amount for their respective rental units.

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 23, 2019

Residential Tenancy Branch