



Dispute Resolution Services

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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 an order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice") pursuant to section 49.

Both the landlord and the tenant JM attended the hearing. The tenant ("tenant") was assisted by his advocate, SC. The landlord acknowledged receipt of the tenant's application for dispute resolution and had no issue with timely service. The landlord did not receive the photographs provided as evidence to the Residential Tenancy Branch by the tenant on June 17th but was prepared to proceed with the hearing without having them. The tenant acknowledged being served with the landlord's evidence.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, call witnesses, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Background and Evidence

The landlord provided the following testimony. The tenancy involves one of four units in a building he purchased approximately two years ago. The building was built around 1969 and has had no major renovations since inception. The tenant, who had been living there for approximately 9 years pays \$980.00 per month rent. The landlord currently holds the tenant's security deposit transferred to him from the previous owner.

In December 2018, snow and ice plugged the drains on the roof, causing flooding to the interior walls of the building. The landlord immediately called his insurance company who hired a restoration company to investigate and assess the damage. The landlord testified there is extensive water damage in the building however the extent cannot be determined because the tenant has not provided sufficient access to the unit. The building requires repairs but due to its age will also require demolition of walls, ceilings and floors and other widespread renovation. If the tenant were to remain in the rental unit during the repairs and renovation, he would be exposed to live electrical wires, construction debris and noise. Vacant possession of the rental unit is required.

On April 25, 2019, the landlord served the tenant with the Four Month Notice by posting it to the tenant's door. The Notice indicates the landlord is ending the tenancy because he *"is going to perform renovations or repairs that are so extensive that the rental unit must be vacant."* The planned work indicated is *"extensive repairs due to flood and the details of the work are for all interior walls to be removed as well as affected flooring."*

The portion of the Four Month Notice indicating which of the following was required was left incomplete:

- I have obtained permits and approvals required by law to do this work
- No permits and approvals are required by law to do this work

The landlord testified that he did not approach the city to obtain the permits to do any repair or reconstruction work. He testified that before he could do that, he had to "deal with the tenants first". He testified that he felt it wouldn't be a "huge deal" to for a renovation permit to be obtained to have the work done. The landlord testified that obtaining the permits would be the responsibility of the company hired by his insurer, not him in any event.

The landlord called his insurance adjuster, LD as a witness. LD testified she handles both the landlord's insurance claim and the tenant's insurance claim made under the tenant's insurance policy. The witness testified she personally witnessed the signs of water damage in the building. There was water egress coming from the roof of the building but the extent couldn't be determined due to the difficulty in accessing the tenant's unit. The witness was unable to say whether the damage was so extensive that permits would be required to repair it. The witness testified the restoration company representative would be a more appropriate witness regarding permits.

The landlord did not call the restoration company representative as a witness because he was not available for the time set for the hearing, however the landlord provided copies of emails from the representative. According to the restoration company representative, the extent of water damage was much larger of a foot print than originally suspected. The work scope will include all exterior walls to the front and back of the building, as well as the two outside side walls. Ultimately, all 4 sides of the building, top to bottom.

The landlord estimates it would be approximately two months for the repairs to take place. The landlord testified he has not yet compensated his tenant in accordance with section 51 of the *Act*.

The tenant provided the following testimony. He acknowledges receiving the Notice on April 25th and filed for dispute resolution on May 21st. He is willing to continue paying rent for his unit and live in it during construction. Although it is not ideal, he goes to the gym for his showers and would rather live through the repairs and renovations than move out. He is not in a position to find alternate accommodations suitable to his financial situation.

At the hearing, the tenant's advocate pointed to section 49 of the legislation and the requirements necessary to end a tenancy for demolition, renovation, repair or conversion.

Analysis

By his acknowledgement, I find the tenant was duly served with the Four Month Notice on April 25, 2019 in accordance with section 89 of the *Act*. The Notice was served pursuant to section 49(6) of the *Act* which reads:

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:

- a) demolish the rental unit;
- b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- c) convert the residential property to strata lots under the [Strata Property Act](#);
- d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- f) convert the rental unit to a non-residential use.

[emphasis added]

The requirements to have the necessary permits is further addressed in Residential Tenancy Policy Guideline PG-2 [Ending a Tenancy: landlord's use of property] which states in part 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.

...

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 Policy Guideline also restates the three requirements to perform renovations or repairs in part 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.

Based on the testimony of the landlord and his witness, I am satisfied the landlord has a genuine intent to renovate the rental unit. The evidence presented satisfies me that the renovations or repairs require the rental unit to be vacant. Requirements 2 and 3 have been met. The landlord has not, however, been able to establish that 1st condition required to end a tenancy for Demolition Renovation, Repair or Conversion has been met, that the landlord has obtained the permits and approvals required by law to do the work.

As section 49 (6) does not allow a landlord to end a tenancy for the purpose of renovations or repairs if the landlord does not have all necessary permits and approvals required by law, I cannot uphold the landlord's Notice to End Tenancy. Consequently, I allow the tenant's application to cancel the 4 Month Notice.

Conclusion

The landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion is cancelled and of no force or effect. This tenancy continues 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: July 03, 2019

Residential Tenancy Branch