



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 an application by the Tenants to cancel a 4 Month Notice to End Tenancy for Landlord's Use of the Property for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice") pursuant to section 49.

The hearing process was explained and parties were given an opportunity to ask any questions about the process.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on or about May 28, 2019. The Landlord said he received the hearing package and he accepts service of the hearing package. Based on the testimony of the Tenant and Landlord, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the 4 Month Notice to End Tenancy?

Background and Evidence

The Landlord said in December 2018 there was a snow and ice issue on the roof of the rental unit which is a 4 plex. The ice problem plugged the drains and resulted in the 4 rental units being flooded. The Landlord said he phoned his insurance company immediately and a restoration company was sent to the rental complex. The Landlord continued to say the restoration company indicated to him that there was extensive

damage to the building and the renovation will be extensive enough that the property has to be vacated by all the tenants. The Landlord continued to say this is an older building and because of the renovation needed because of the flood he is taking this opportunity to do further renovations to update and modernize the building. The Landlord said he issued 4 Month Notices to End Tenancy for Renovations to all the tenants in the building as he believes the renovation may take up to one year to complete. The Landlord said the renovations will be structural and the building will be taken down to the studs.

The Arbitrator said page two of the 4 Month Notice to End Tenancy dated April 25, 2019 indicates the Landlord has the required permits to do the renovations. The Arbitrator asked the Landlord if he has the permits and approvals needed as there were no permits or approvals submitted with the evidence. The Landlord said he did not have the permits or approvals as of yet because he needs to complete the investigation of the damage before he obtains the permits.

The Tenants said they do not want the end the tenancy and asked the Landlord if an arrangement could be made for them to stay in their unit until one of the other units were available for them to move into.

The Landlord said this was not possible as the entire building is going to be renovated at the same time.

The Tenant said they do not believe their unit was damaged as badly as the other units in the building so they want to continue the tenancy as is. The Tenant said they hired their own building inspector to do moisture testing and they believe the report shows the unit is livable.

The Landlord said he believes the units are uninhabitable and the renovations are extensive enough that the units must be vacated.

The Arbitrator offered the parties an opportunity to mediate or settle this dispute between themselves on a voluntary basis. The Landlord made a monetary offer to the Tenants and the Tenants declined the offer. The Tenants said they wanted to go to decision.

The Landlord said he understands that he is required to have the permits or approvals for the renovations in place for the 4 Month Notice to End Tenancy for Renovations and he will reissue a new Notice to End Tenancy with the permits in place.

The Tenants said they understand a new 4 Month Notice to Notice to End Tenancy will be issued to them.

Analysis

Section 49 (6) of the Act says: 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.

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.

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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 the Tenants, I accept the landlord has a genuine intent to renovate the rental units. As well, I accept that the rental units and complex are in need of renovations that require the 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 to End Tenancy.

Conclusion

The landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion is cancelled. I order the tenancy to continue as agreed in the tenancy agreement. .

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 09, 2019

Residential Tenancy Branch