



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRH HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 14, 2019 (the “Application”). The Tenant applied to dispute a Four Month Notice to End Tenancy dated May 16, 2019 (the “Notice”).

The Tenant and Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed he received the hearing package and Tenant’s evidence. The Tenant confirmed she received the Landlord’s evidence. The Tenant said she received this late but acknowledged she had time to review it.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between a different landlord, the Tenant and a second tenant. The parties agreed the Landlord purchased the rental unit five and a half years ago and therefore became the landlord. The Tenant advised that the second tenant no longer lives at the rental unit.

The tenancy started August 15, 2011 and is a month-to-month tenancy. The parties agreed rent is \$1,134.00 per month. Rent is due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are that the tenancy is ending because the Landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Landlord has indicated that no permits and approvals are required by law to do this work. The work to be done is detailed as follows:

Complete renovation of apt...removal of all cabinets and fixtures and installation of new ones including kitchen appliances

The parties agreed the Notice was served on the Tenant in person May 18, 2019.

The Agent testified as follows in relation to the grounds for the Notice. The Landlord is "gutting" the apartment. The Landlord is installing new flooring, new cabinets, new tiles around the bathtub, a new bathtub, a new sink and new mirrors in the bathroom. The walls will be fixed up after the cabinets, sink and bathtub are removed and replaced. The Landlord is installing new cabinets, appliances and flooring in the kitchen. The cabinets are custom made. The renovations require different people to do the different tasks. A similar renovation was done in another apartment in the building.

The Agent further testified as follows. The renovations are not just cosmetic. The renovations are required because the counter is chipping, the floors are not in good condition, the cabinets do not work and the ventilation in the kitchen is away from the stove. The Landlord is going to re-arrange the exhaust fans in the bathroom and kitchen.

The Agent further testified as follows. Nobody can stay in the rental unit during the renovations. As stated by the contractor in his letter, the bathroom and kitchen will be removed, other rooms in the rental unit will be used as the contractor's workshop and to

store equipment and there will be dust. The renovations will take three to four months because they are extensive and it is a long process. For example, the tiles in the bathroom must be chipped off which is time consuming. The kitchen will be unusable for three to four months because it is going to be removed. The renovations cannot be done in stages. The entire kitchen and entire bathroom must be done at the same time.

I asked the Agent why essential items in the rental unit, such as the toilet, would need to be unusable for three to four months. He said this is "how they work". The Agent said he went to another apartment while it was being renovated and it was chaos. The Agent said his son-in-law works in construction and this is "what they do". The Agent submitted that it is dangerous to the Tenant's lungs to live in the rental unit while the flooring and painting are being done.

In relation to permits, the Agent testified that the contractor said no permits are required. The Agent testified that they do not need permits for renovations unless they are modifying electrical or changing the water source which they are not.

The Tenant testified as follows. She has lived in the rental unit for ten years. She does not agree that the rental unit is in disrepair. She does not agree that the renovations are required. She would be open to vacating while the renovations are being done. She is planning to be away for three to four weeks during the summer. She would vacate for one to two months if required. She does not agree that everything has to be done at once as the Landlord could do the renovations in stages.

In reply, the Agent further testified as follows. The kitchen and bathroom are not great. It is more efficient to do the whole apartment at once. The bathroom fan does not work well. There is no ventilation in the kitchen. The cabinets do not close.

The Tenant disagreed that the bathroom fan and cabinets do not work. She testified that there is ventilation in the kitchen. She said the fans are not great, but they work.

The Landlord submitted a written statement from the Agent and an email from a contractor. The email states that "there is no way someone can live through the proposed renovation". It states that the entire kitchen and bathroom will be removed. It states that the contractor cannot work around furniture and belongings. It states that the living room and dining room will be a workshop and storage for materials. It states that there cannot be anything in the unit while the flooring and painting is done. It states that the Tenant will not have a kitchen or bathroom and nowhere to sleep. It states that the previous unit took three months to complete.

Analysis

The Notice was issued under section 49(6)(b) of the *Act* which states:

(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;

There is no issue that the Tenant received the Notice May 18, 2019.

The Tenant had 30 days from receiving the Notice to dispute it pursuant to section 49(8)(b) of the *Act*. I find the Tenant filed the Application within the 30-day time limit set out in the *Act*.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities.

Policy Guideline 2B deals with ending a tenancy to renovate a rental unit and states in part the following:

When ending a tenancy under section 49(6) of the RTA...a landlord must have all necessary permits and approvals that are required by law...

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy...

If the landlord is planning to do renovations or repairs and claims that permits are not required, this raises the question of whether the landlord intends in good faith to renovate or repair the rental unit in a manner that requires vacant possession...

In *Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator)* (2007 BCSC 257), the BC Supreme Court found that “the renovations by their nature must be so extensive as to require the rental unit to be vacant in order for them to

be carried out.” The Court found “vacant” to mean “empty”. The Court also found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs...

In *Allman v. Amacon Property Management Services Inc.* (2006 BCSC 725), the BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the “nature and extent” of the renovations or repairs require the rental unit to be vacant.

Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant...

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing sinks, backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

Appendix A of Policy Guideline 2B outlines the following:

Type of Renovation or Repair	Disruption to Tenants	Requires Vacancy?
Replacing faucets and fixtures	Usually minimal	Unlikely
Replacing bathtubs/toilets	Usually minimal	Unlikely
Replacing cabinets/vanities/countertops	Usually minimal	Unlikely
Replacing backsplashes	Usually minimal	Unlikely
Interior painting	Usually minimal	Unlikely
Replacing flooring/baseboards	Usually minimal	Unlikely
Replacing appliances	Usually minimal	Unlikely

The Landlord has failed to prove the grounds for the Notice for the following reasons.

The Landlord did not submit any evidence to support the Agent's testimony that permits are not required for the proposed work.

As stated in Policy Guideline 2B, the assertion that permits are not required "raises the question of whether the landlord intends in good faith to renovate or repair the rental unit in a manner that requires vacant possession".

I am not satisfied based on the evidence provided that the proposed renovations require vacant possession.

I do not accept that anything in the rental unit does not work or requires repair. The Agent testified that the bathroom and kitchen fans and cabinets do not work. The Tenant disagreed with this. There is no evidence before me to support the Agent's testimony on this point. In the absence of such evidence, I do not accept that anything in the rental unit is broken or requires repair. Given this, and considering the Agent's testimony and contractor's email, I find the proposed renovations are cosmetic and intended to update the décor of the rental unit.

It is clear from Policy Guideline 2B that the proposed renovations are unlikely to require vacant possession. As stated at page four, cosmetic renovations are "rarely extensive enough to require a rental unit to be vacant". All of the proposed renovations are either

listed as examples of cosmetic renovations at page four of Policy Guideline 2B or are akin to the examples listed. Further, almost all of the proposed renovations are listed in Appendix A as usually resulting in minimal disruption to tenants and unlikely to require vacant possession.

Given the comments in Policy Guideline 2B, the Landlord would need to provide compelling evidence that the proposed renovations require vacant possession. The Landlord has not done so. The Landlord has not submitted compelling details, explanations or supporting evidence about the proposed renovations or why they are of such a nature or extent that they require vacant possession.

The Landlord only submitted two pieces of evidence. I do not find that the written statement of the Agent adds to his testimony as outlined above. The only other evidence submitted is the contractor's email. I put little weight on this piece of evidence given it is an email and not a signed statement from the contractor. The email is not supported by further documentation. The Landlord did not call the contractor as a witness at the hearing to give affirmed testimony or to be questioned about the statements made in the email.

Apart from the form of the evidence, I do not find the contractor's email to be strong evidence showing the proposed renovations require vacant possession. The email lacks detail about the proposed work. There is no explanation as to why the proposed renovations need to take three to four months. It does not explain why the entire bathroom and kitchen need to be removed and left that way for three to four months. The email contains conclusory statements about requiring vacant possession without outlining a valid basis to support these statements.

Given the Agent's testimony and contractor's email, I find the Landlord is attempting to end the tenancy because it would be faster, more cost-effective and easier to renovate if the Tenant moved out. As stated in *Allman v. Amacon Property Management Services Inc.* (2006 BCSC 725), this is not permitted. I do not accept, given the lack of compelling evidence to support this, that the proposed renovations could not be carried out in a manner that allowed the tenancy to continue.

For example, in the absence of further evidence or explanation, I do not accept that the proposed renovations cannot be done in stages such that the Tenant is not without a toilet or kitchen appliances for three to four months. It may be more convenient for the Landlord to remove the entire bathroom and kitchen all at once; however, convenience is not a sufficient reason to end the tenancy.

Further, I do not accept that the Tenant cannot live in the rental unit while flooring and painting is being done. Again, the comments in Policy Guideline 2B do not support this. There is no evidence before me showing this would be dangerous as alleged by the Agent. In the absence of some evidence showing it would be dangerous, I do not accept this position.

Given the proposed renovations, Policy Guideline 2B and lack of compelling evidence showing the proposed renovations require vacant possession, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Landlord has failed to prove the Notice. The Notice is cancelled. The tenancy will continue until 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 *Act*.

Dated: August 13, 2019

Residential Tenancy Branch