Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IAG ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M FFT**

Introduction

This was a joined application whereby several tenants sought 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 of the *Residential Tenancy Act* (the "*Act*").

The tenants attended, represented by an advocate, MM ("tenants"). The landlord attended, represented by company directors, PC and AW ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenants' application for dispute resolution. Both parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

Two of original applicant/tenants moved out of their rental unit some time before the commencement of this hearing. The tenant advocate testified that those tenants no longer sought an order to cancel the 4 Month Notice. Pursuant to section 64(2) of the *Act*, I dismiss those tenants' application as it does not pertain to a dispute that may be determined under Part 5 of the *Act.* The dismissed file number is noted on the cover page of this decision, however the tenants' names will not appear.

Issue(s) to be Decided

Should the 4 Month Notice issued by the landlord be upheld or cancelled?
Are the tenants entitled to recover their filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all

details of the 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.

The landlord provided the following testimony. The rental units are self contained units in a multi-family complex comprising of 30 wooden buildings arranged into 3 building blocks. He acquired the property in the last quarter of 2018, purchasing it ‘as-is’. The landlord understood upon purchase that some of the units were vacant and partial renovations needed to be done to them. They landlord intended on doing minimal repairs to the unrented units to make them rentable.

In May 2019, crews were sent in to live onsite while performing the repairs on the vacant units. In the vacant units, the crews discovered white and black mold behind the walls and the insulation between the walls full of water. The stucco exterior of the building was deteriorating, especially on the southern exposure walls. Some of the studs were rotted due to prolonged water exposure.

The landlord contacted the city inspector in late May 2019 to perform repairs. On June 7, 2019, the city issued a **repair permit**, provided as evidence in these proceedings. The **repair permit** reads:

> Permission is granted for [landlord] for the purposes of repairs to existing building – replace building envelope, replace/repair drywall where mold is found – replace leaky copper pipes with pvc.
> Building Envelope renovation Notes:
> All studs that are rotting and covered in black mould will be required to be replaced. The studs can be replaced with No. 2 or better 2x4 studs. New insulation installed will be R-14. 6 ml. poly will be required for vapour barrier.
> - Any gyproc that is removed on the party wall will have to be replaced by 5/8 type X
> - Exterior sheathing will be 3/8 plywood OSB that is wrapped with an air barrier.

The landlord served the tenants with Notices on June 10, 2019 or June 11, 2019 by either personal service or by posting to the door of the tenant’s unit. Each of the Notices indicate the landlord is ending the tenancy because the landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The work the landlord is planning to do is detailed as:

> Planned work – renovation repair. The details of work indicate remove water damaged drywall, studs, flooring, ceiling, replace, repair, finish.

With the repair permit, the landlord continued to do repairs to the vacant units but did not work on the tenanted units. Detailed descriptions and reports were generated regarding each of the units the landlord performed work on and were provided as evidence for this hearing, however no reports were created for the tenanted units. The landlord testified they did not go into any of the units that were occupied by renters to do inspections, nor were any photographs of the tenanted units provided as evidence by the landlord.

The landlord testified that subsequent to the issuance of the Notices, he submitted a **development permit** to the city to replace the exterior stucco cladding of the rental units with vinyl siding. Understanding that replacement of the exterior wouldn't affect the existing tenancies, the landlord included it in evidence for disclosure. Verbal assurances from the city for the development permit has been granted, but they are still awaiting the actual development permit from the city.

Once repairs began to the vacant units, the landlord discovered more issues with those units which he submits are likely to exist in all the units. These issues include pinhole leaks in the copper pipes which lead to mold and rotting insulation, drywall and studs and a faulty plumbing issue whereby the floor joists had been cut through by a previously hired plumber to route drain lines. This faulty work led to interior walls sinking and compromising building structure. Photographs of the vacant units undergoing the repairs have been provided as evidence. The landlord has also provided a list of work to be completed on all the units which will bring them all up to current health and safety standards.

When cross examined by the tenant's advocate, the landlord acknowledged that Worksafe BC had not authorized the work being undertaken at the worksite. As of September 13th, the date of this hearing, work has been halted but is scheduled to resume when the landlord has Worksafe BC's authorization.

The landlord's witness, AW testified that repairs to the units to bring them up to code will cost over $600,000.00. He testified that his company is responsible for the health and safety of the tenants to stop the dangers of mold, unsafe floor joists, and water damage that has been left unattended for a long time.

The tenants provided the following testimony. None of the tenants are experiencing issues with mold, water ingress or any of the issues identified by the landlord. The tenants presented photographs of each of their units as evidence. Each photograph is

described by the tenant's advocate as depicting rental units free from damage or requiring any repairs extensive enough to require an end to their tenancies. The tenants acknowledge there were issues of burst plumbing pipes in units 15, 16, 25, 5 and 26 however none of those are rented units.

The tenants also testified and the landlord acknowledged that the units in this dispute have not been inspected by the current landlord, to determine what if any repairs are required.

The tenants further submit that the landlord proceeded to have work done on the vacant units exposing both the landlord's workers and the existing tenants to airborne mold and possible asbestos due to the age of the building. They were served with a Notice to End Tenancy before the landlord had the authorizations and permits required by law.

Analysis

Residential Tenancy Branch Policy Guideline 2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] was created to help parties understand the issue of the requirements involved to end a tenancy in accordance with section 49. (reproduced below)

Section 49(6) of the Residential Tenancy *Act* (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to: 1. demolish the rental unit; 2. renovate or repair the rental unit in a manner that requires the rental unit to be vacant; 3. convert the residential property to strata lots under the *Strata Property Act*; 4. convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*; 5. convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or 6. convert the rental unit to a non-residential use.

The good faith of the landlord was not called into question by the tenants. The evidence presented by the landlord is also sufficient to satisfy me that the landlord has an honest intent to perform the work described in their Notice to End Tenancy.

When ending a tenancy under section 49(6) of the *Act*, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals. The permits or approvals in place at the time the Notice to End Tenancy is issued must cover the extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish

evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

In the case before me, the tenants disputed whether the landlord had approval from Worksafe BC to carry out the removal of the drywall and wall sheathing that would potentially expose both the tenants and the landlord's workers to asbestos and mold. In cross examination, the landlord acknowledged that at the time the Notices were given, Worksafe BC had not given their approval. He also testified the work has been halted pending their approval. I have examined the photographs of the mold in the units being worked on, taken before approval and authorization from Worksafe BC was given. I find myself in agreement with the tenants' argument that the landlord was premature in issuing their Notice to End Tenancy.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure indicates the onus of proof is on the landlord to prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice. In the case before me, the landlord has provided insufficient evidence to show the tenanted units require the same extent of repairs as those they have already worked on. In terms of the *Act*, they have not shown they require vacant possession as required by section 49(6)(b).

Although it is reasonable to assume that there is consistency in the age and structure and state of repair between all the units, the landlord has not presented any documentary evidence to corroborate this. The landlord testified that the south facing walls are in poor condition due to weather exposure however I have not been supplied with any photographs or expert report to indicate such condition exists in each of the disputed rental units. Likewise, the landlord says all the units suffer from various issues that require remediation however I have not been presented with a list of deficiencies requiring vacant possession for each of the units currently tenanted. I note no expert testimony from a certified builder was called to provide evidence regarding the condition of the tenants' units. Based on the insufficient evidence provided by the landlord, I cannot come to the conclusion that the landlord requires vacant possession sought in the Notice.

While the landlord retains the right to enter the tenants' rental units in accordance with section 29, he has not used this provision in the *Act* to gather the evidence he requires to successfully prove the requirements to end a tenancy under section 49 have been met.

Conclusion

Given the facts before me, I find the landlord has failed to prove he had all the necessary permits and approvals that are required by law before giving the tenants Notice. I also find the landlord has failed to provide sufficient evidence to show he requires vacant possession of these tenants' rental units in order to carry out the repairs or renovations sought in the Notices dated June 10, 2019. The Notices dated June 10, 2019 are cancelled and of no further force or effect. The tenancies shall continue with the rights and obligations of the parties remaining unchanged until ended in accordance with the *Act*.

As the tenants were successful in their applications, they are entitled to recover the filing fees paid for their applications. In accordance with section 72 of the *Act*, the tenants may deduct $100.00 from a single rent payment due to the landlord.

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: September 19, 2019

Residential Tenancy Branch