



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIGNATURE SUITES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”).

The Tenant and an advocate (the “Tenant”) were present for the hearing as was an agent for the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the majority of the Tenant’s evidence. The Tenant stated that a copy of an email was mailed to the Landlord in a second package but was returned. They submitted a copy of the envelope which states that it was returned as the address was incomplete. As such, I find that the Landlord was not served with a copy of the email evidence from the Tenant and therefore the email is not accepted and will not be considered in this decision.

The Tenant confirmed receipt of a copy of the Landlord’s evidence and did not bring up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the Four Month Notice be cancelled?

If the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2007. Rent in the amount of \$1,210.00 is due on the first day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy.

The Landlord testified that they served the Tenant in person with a Four Month Notice on July 15, 2019. The Tenant confirmed receipt of the Four Month Notice on July 15, 2019.

A copy of the Four Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- *I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant*

It is indicated on the Four Month Notice that no permits and approvals are required by law to do this work.

The Four Month Notice states the following regarding the details of the work:

Abatement of asbestos – Removal of ceiling and insulation damaged by an extensive water leak

The Landlord testified that in December 2018 the roof of the residential property was damaged by a strong wind storm, causing leaking into some of the rental units. The Landlord stated that the urgent issue was addressed right away while the roof was repaired later, followed by repairs to the rental units. The Landlord stated that while completing the repairs to the rental units, it was noticed that there is asbestos in the ceiling that needs to be removed.

The Landlord testified that the rental unit needs to be vacant to complete the asbestos abatement and that the rental unit will also need to be empty of the Tenant's belongings. He stated that he is unsure as to timelines due to the insurance company handling the asbestos and subsequent repairs. However, he estimated that it may take 15-30 days, followed by repair of the ceiling after the asbestos has been removed. The Landlord noted that two other rental units also need to be empty and have received

Four Month Notices as well. Due to this, the Landlord stated that the start date of the abatement cannot be confirmed until they know that all of the units will be empty.

The Landlord testified that he does not believe there are permits required, but that this would be the responsibility of the insurance company who is taking care of the work. He stated that once the ceiling and insulation is removed, another company will come in to fix the ceiling and finish the repairs which could take another few months.

The Landlord stated that they would be willing to enter into a new tenancy agreement with the Tenant once the repairs are completed at an increased monthly rent. However, later he also noted their willingness to continue the tenancy as long as the Tenant is able to move out temporarily while the work is completed, and therefore continue the tenancy for the same rent amount.

The Landlord submitted into evidence an email between the Tenant and an insurance agent in which the agent writes that the Tenant will not be able to live in the unit during the repairs, due to safety concerns. In the email the insurance agent also writes in part the following:

We have advised the other units that they will need to move out as well. When they are out the repairs will start. They should take 15 business days. After that the remaining work will be bid on by 2 Contractors. The winning bid will then complete the repairs. You will not be able to live your unit for that time as well.

We will be able to tell you the remaining time frame once we have a winning bid. It is unfortunate that we are not able to have the bids done and going through the approval process now or before, but due to the nature of the repair the abatement portion has to be done first. The rood had to be complete before the abatement could start.

The Landlord also referenced a letter from a hazardous material removal company dated June 24, 2019 in which they state that no unqualified people must enter the work area while going through the asbestos abatement process.

The Landlord also referenced a letter from an environmental consulting company dated January 18, 2019 which notes the Work Safe procedure for safely removing asbestos.

The Tenant stated that they are not disputing that the rental unit needs to be vacant for the asbestos removal and that the repairs are needed. However, they stated that they

are disputing that the tenancy needs to end for the repairs to occur. The Tenant confirmed that she is willing to temporarily move out of the rental unit. However, she also stated that she would like to move back into the rental unit following the completion of the repairs and noted concern regarding a potential increase in the monthly rent amount.

The Tenant also questioned the validity of the Four Month Notice given that minimal details regarding the repairs were provided on the notice and that the timeframe for vacancy and completion of the repairs remains unknown. The Tenant stated their position that this information should have been clear prior to ending the tenancy through the Four Month Notice. The Tenant stated that it seems that there will be significant delays due to completing the asbestos abatement and then accepting bidding on the ceiling repairs, instead of having the contractor bids in place prior to starting the initial work.

The Tenant also stated their belief that permits are required for this type of work.

The Landlord stated that the Tenant is welcome to move back into the rental unit at the same monthly rent amount but that he cannot guarantee the timeline as to how long the repairs might take. The Tenant stated that they understand the difficulty in pinpointing a timeline, but that this is not the Tenant's responsibility and that a clearer timeline should be provided.

Analysis

The parties agreed that the Tenant was served with a Four Month Notice on July 15, 2019.

The Four Month Notice was served pursuant to Section 49(6) of the *Act* which states the following:

(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:

- (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.

As stated in Section 49(8)(b) of the *Act*, a tenant has 30 days to dispute a notice served under Section 49(6) of the *Act*. As the Tenant received the Four Month Notice on July 15, 2019 and filed the Application for Dispute Resolution on August 2, 2019, I find that she applied within the timeframe provided by the *Act*.

Therefore, the matter before me is whether the Four Month Notice is valid. As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the notice is valid.

The parties were in agreement that asbestos removal and repairs to the ceiling are required in the rental unit. However, it also seems that the parties were in agreement that the tenancy does not need to end and instead, that the Tenant is willing to move out temporarily while repairs are being completed and for the tenancy to continue during this time. However, I find the Tenant's concern regarding the lack of information on how long she would need to vacate the rental unit to be valid.

The parties were also not in agreement as to whether permits were required for the work to be completed, although the Landlord did not have specific information on this given that the insurance company is handling this part of the work. However, I refer to *Residential Tenancy Policy Guideline 2B* which states that all permits and approvals must be obtained prior to giving the tenant notice. This policy guideline further states that the onus is on the landlord to provide evidence of the permits/approvals, or evidence that they are not required:

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.

The Tenant questioned whether permits are required for the work being completed in the rental unit and I find that the Landlord did not clearly establish that they are not required, such as through submission of documentation that would confirm this.

Policy Guideline 2B references the vacancy requirement for renovations or repairs and notes in part the following:

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.

While I find that the Landlord has established that the rental unit must be vacant for the completion of the asbestos abatement, the evidence indicates that this may take approximately 15 business days. In the absence of information that would provide clarification on the full timeline for completion of the remaining repairs, I am not satisfied that the repairs require anything further than a “brief period of vacancy” such that the tenancy could not continue while the Tenant moves out temporarily.

I also find it important to note that the Four Month Notice references ending the tenancy for asbestos abatement and does not make mention of additional repairs required.

Furthermore, the Landlord was in agreement that the tenancy could continue while the repairs are being completed and it seems that the parties may be able to reach an agreement for the Tenant to temporarily vacate the rental unit. Thus, I am not satisfied that the Landlord has met the burden of proof to establish that the tenancy must end for the asbestos abatement to be completed, that the asbestos abatement requires more than a brief period of vacancy, and that the necessary permits and approvals have been obtained.

Therefore, the Tenant's application to cancel the notice is successful. The Four Month Notice dated July 15, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The Four Month Notice dated July 15, 2019 is cancelled and of no force or effect. This tenancy continues 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 *Residential Tenancy Act*.

Dated: October 1, 2019

Residential Tenancy Branch