



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by a total of five different tenants via a joiner application seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a total of five 4 Month Notices to End Tenancy for Landlord's Use of Property dated September 23, 2019 (4 Month Notices) and to recover the cost of the filing fee.

Tenant or agents for tenants attended as follows, JM (103), SS (304), JH (208), KM (102), a legal advocate for the tenants WG (advocate), the landlord TH (landlord), and a property manager for the landlord SE (property manager) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

Neither party raised any concerns regarding the service or receipt of documentary evidence. I find the parties were sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

At the outset of the hearing, tenant JH (208) confirmed that she had reached an agreement with the landlord and was planning to vacate as a result of the 4 Month Notice. Therefore, the tenant from 208 requested to withdraw their application in full, which was not opposed by the landlord. As a result, I will only consider the applications

of the other four applicants before me and I do not grant the tenant from 208 the filing fee as the application was withdrawn during the hearing.

In addition to the above, the parties in attendance confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Although a tenant did not attend the hearing for unit 302, the decision will be emailed to BEB of 302 at the email address provided in their application.

Issues to be Decided

- Should the 4 Month Notices be cancelled?
- If yes, are the remaining tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that the landlord served the 4 Month Notices no later than September 28, 2019. The parties disputed the 4 Month Notices by October 16, 2019, which is within the 30-day timeline provided for under section 49(8)(b) of the Act.

The reason listed on 4 Month Notices all state:

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. 10 weeks the unit is required to be vacant.

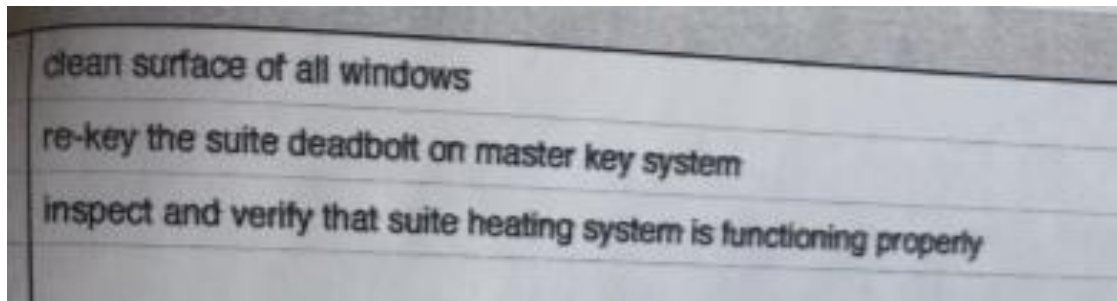
The table is 3 ¼ pages in length (table) and does not provide a time breakdown for any of the items listed. The effective vacancy date listed on the 4 Month Notice is February 1, 2020.

Below is a copy of the table provided by the landlord to the tenants, which is listed as extensive renovations:

remove kitchen faucet
remove kitchen sink
remove/demo kitchen laminate countertop
remove/demo hoodfan
remove/reuse kitchen cabinets
remove/reuse kitchen fridge
remove/reuse kitchen range
remove/demo kitchen tile backsplash - make sure existing drywall not damaged
remove/demo kitchen ceramic tile floor
remove/demo particleboard subfloor under ceramic tile - remove all rotten subfloor material
remove bathtub faucet
remove abs p trap and associated drainage plumbing under bathtub
remove bathtub
remove bathroom faucet
remove abs drainage plumbing under bathroom sink
remove hot and cold supply lines under bathroom sink
remove bathroom sink
remove/demo laminate bathroom countertop
remove bathroom vanity cabinet
remove all bathroom hardware include towel racks ,paper disperser etc
remove/ reuse bathroom shower diverter cover plate, tub filler, and shower nozzle
remove shower rod and rings
remove bathroom mirror/med cabinet

remove toilet supply line
remove/dipose of bathroom toilet
remove/dipose of ceramic tile and drywall around the bathtub surround
remove/dipose of ceramic floor tile
remove/dipose bathroom subfloor
remove/dipose of all rotten wood around toilet drain
install new plywood subfloor to kitchen floor
install PL premium subfloor adhesive under plywood kitchen subfloor
attach kitchen plywood subfloor with 1 3/4 inch flooring screws on a 4 inch grid pattern
install self levelling compound as required to top of kitchen plywood subfloor
install schluter metall edging on perimeter of plywood subfloor
install ceramic 1 by 2 ft ceramic tile floor to kitchen subfloor
install sanded tile grout to all ceramic tile floor joints
seal all ceramic tile kitchen tile floor joints
install new kitchen cabinets
install new quartz countertop - 3cm thickness - sink opening is pre cut in shop
install new undermount sink with silicon and clamping system
install new kitchen faucet c/w spray nozzle
install new abs drainage under sink
install new kitchen tile backsplash
grout the new kitchen tile backsplash
complete all silicon caulking to countertop and backsplash
install new handle style knobs to kitchen cabinet doors and drawers
install new soaker style bathtub
install abs p-trap and associated drainage plumbing
install new water resistant drywall to tub surround
install new ceramic tile to tub surround
grout the ceramic tile joints on the tub surround
install new curved shower rod plus shower rings

repair rotten bathroom subfloor
install new 3/4 inch plywood subfloor
install PL premium subfloor adhesive under plywood subfloor in bathroom
install floor screws at 4 inch grid pattern to bathroom subfloor
install ceramic floor tile to bathroom floor
grout ceramic tile flooring
install new vanity cabinet
install new quartz vanity countertop - thickness 3 cm
install new ceramic undermount sink to quartz countertop
install new vanity faucet
install new abs p-trap and drainage to undercount sink
install new knobs to vanity doors
install new bathroom medicine cabinet
install new elongated dual flush toilet
install new bathroom towel rods and paper dispenser
sand oak floors with 3 different grits of sandpaper
remove all dust from oak flooring
install 3 coats of varathane floor finish
repair all drywall holes damaged by previous tenant with 3 coats of drywall filler
paint all walls and ceiling with high quality behr paint - 2 coats minimum
paint all trim and doors with high gloss behr paint
inspect/repair/clean/adjust all mini blinds
inspect/repair all bug screen mesh in windows and sliding door
powerwash deck and handrail -clean all green moss
repaint deck surface with rubber based enamel product
install new 24 inch stainless steel microwave hood fan
install new 24 inch LG stainless steel fridge
install new 24 inch stainless steel electric range c/w glass surface
complete extensive construction cleaning to entire suite



[Copied and pasted from table]

The tenants have stated in their application that the landlord is not acting in good faith and that the landlord lacks the necessary permits for what the landlord describes as “extensive renovations” on the 4 Month Notice. The tenants also state that vacant possession is not required.

The landlord listed that no permits are required to do the work listed on the table attached to the 4 Month Notice. One tenant raised the issue that a dishwasher was mentioned verbally to the tenant when the work was described, which likely would require a permit, and the landlord has not listed dishwashers on the table. The landlord stated that they are a professional civil engineer and has worked on GM Place and the former SkyDome. The landlord did not provide any supporting documentary evidence that they are a civil engineer or their credentials. The landlord stated that there are 20 units in the building and that two of the units already renovated; 304 and 306, did not require a 4 Month Notice as a mutual agreement was reached with the previous tenants for units 304 and 306.

The landlord admitted that they did not do a critical analysis of the timeline required for each of the items listed on the table attached to the 4 Month Notice. As a result, the landlord was unable to describe how they reached the 10-week estimated timeline listed on the 4 Month Notices. The landlord stated that they listed 10 weeks based on their experience.

The landlord referred to colour photos submitted in evidence, most of which were very blurry. The tenants stated that for unit 204, the tenant vacated on August 31, 2019 and the unit was listed for rent as of September 30, 2019, which is only 4 weeks after the tenant vacated. The tenants provided an ad in support of this testimony. The landlord in response stated that they “measured up in advance” and that the work took two months and not one. The landlord testified that a major renovation was completed 10 years ago that required permits and involved plumbing in the rental units. The tenants stated that it

was not 10 years ago, and was only 6 years, which contradicts the testimony of the landlord. The landlord stated that the previous renovation did not remove the particle board and replace with plywood under the toilets and that particle board disintegrates and becomes mouldy and the toilets can fall through the floor as a result. The landlord did not provide any photographs showing a toilet going through the flooring.

The advocate stated that the work could be done with the tenants remaining in the rental unit and that while the work may cost more, that is not a reason to end their tenancies. The landlord stated that there is too much work to do around the tenants living in the rental unit and that to do so would be ridiculous. The landlord confirmed that he did not have any reports or unit-specific documents completed to set out what work was required for each of the four remaining units. The only document was the table, which did not have any timelines attached to any of the items listed. The landlord stated that the work would take 2-3 months; which I note does not coincide with the timeline and ad presented by the tenants for unit 204. One tenant stated that they did not hear jackhammering in unit 204 during the one month the renovation was being done in that unit. The landlord stated that they received the appliance delivery too soon so the appliances were sitting in a corner until the unit was ready.

The landlord stated that only 1 unit in the building is for rent, which a rental pending, so the four tenants cannot be accommodated within the rental building. The landlord also stated that it is not realistic to rent the four units for the same amount when the work is completed as a landlord expects a fair return on their investment. The tenants believe that higher rent is the real motivation for the 4 Month Notices being served on them. The landlord stated that they have a history of not selling buildings and that the landlord wants to have a clean, solid building.

The property manager claims that there is mould in the rental units that requires repair; however, the table does not list mould remediation and the property manager confirmed that there were no photos submitted by the property manager to confirm the alleged mould in the four units. The tenants testified that a new soaker tub is listed on the table, yet none of the new units have new soaker tubs, to which the landlord did not respond.

The tenants confirmed that the landlord has only been in for repairs as needed and not to inspect the rental unit. The landlord stated that in April 2019, the landlord inspected every unit of the building, which the tenants disputed. All of the tenants present confirmed that they were not served with a 24-Hour Notice of Entry by the landlord to inspect their rental unit. The tenants also stated that they advised the landlord by email

that they could vacate to accommodate the renovation, and there is no dispute that the landlord has not responded to those emails.

The landlord confirmed that they did not submit any written assessments of the five units being proposed to be renovated in the matter before me. The landlord testified that 12 units in the 20-unit building have been renovated and later changed their testimony to stated that only 10 units have been completed since the building was purchased in April 2019.

All tenants who attended the hearing confirmed that they have the ability to temporarily vacate the rental unit to accommodate the proposed work of the landlord, and as a result, the tenancies do not need to end as a result.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, I find the tenants filed their application on time to dispute the 4 Month Notice as indicated above. When tenants dispute a 4 Month Notice on time, the onus of proof reverts to the landlord to prove that the 4 Month Notice is valid and should be upheld. If the landlord fails to prove the 4 Month Notice is valid, the 4 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when tenants have filed to cancel a 4 Month Notice and call into question the “good faith” requirement, the onus lies on the landlord to prove that the 4 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

In addition to the above, Residential Tenancy Branch (RTB) Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental unit to a Permitted Use (policy guideline 2B) states in part:

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.

I find the photographic evidence to be of very little weight as most of the photos were very blurry. In addition, I find the landlord has failed to provide any supporting written documentation from a certified tradesperson or copy of a current building bylaw that permits are not required for the “extensive renovations” listed on the table. Furthermore, the landlord has provided no supporting credentials that they are a professional civil engineer and I find it unreasonable to propose the type of extensive renovations without a timeline listed in the work plan, and which I find contradicts the timeline involved with unit 204 based on the evidence presented by the tenants. Also, I find the landlord has provided insufficient evidence to support the 10-week timeline listed on the 4 Month Notices and find that this was merely a guess by the landlord, that is not supported by a specific work plan by each rental unit.

Furthermore, RTB policy guideline 2B states:

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:

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

[Numbers added for ease of reference]

I find that most of the items listed on the table fall under the 5 items listed directly above are cosmetic in nature and do not require vacant possession. Furthermore, I find it more likely than not that the particle board toilet issues would not require significant time to repair for each unit. Therefore, after carefully considering all of the evidence and testimony before me and I agree with the tenants that the 4 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I find this was also supported by the landlord stating that they expected a fair return on their investment, and that I find the landlord provided vague testimony and timelines, which do not support the reason listed on the 4 Month Notice and are insufficient to support a 10-week timeline.

Furthermore, as I find that most of the work is cosmetic in nature, I find that vacant possession is not required. Therefore, on the balance of probabilities, I find it more likely than not that the landlord has not issued the 4 Month Notice in good faith due to

insufficient evidence and as a result, **I cancel** all 4 Month Notices dated September 23, 2019.

I ORDER the tenancies for all four units 102, 103, 302 and 304 to continue until ended in accordance with the *Act*.

As the tenants' applications were successful, I grant the tenants of 102, 103, 302 and 304 a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenants' applications are successful. The 4 Month Notices are cancelled. The tenancies shall continue until ended in accordance with the *Act*.

The tenants are granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision will be emailed to all parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 4, 2019

Residential Tenancy Branch