



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with Applications for Dispute Resolution filed by the tenants to cancel a Four Month Notice to End Tenancy (the “Notices”)

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Should the Notices be cancelled?

Background and Evidence

The landlord testified that they purchased the property in 2018. The property is 44 years old and consist of three different complexes’, which have a total of 30 units. The landlord stated that the only tenants that are remaining in the complex are the ones subject to this application.

The landlord testified that permit #18713, was obtained for the purpose of repairs to the existing building by replacing the building envelope which is comprised of replacing/repairing drywall where mold is found and replacing leaky copper pipes with PVC. Filed in evidence is a copy of the permit.

The landlord testified that permit #18556, was obtained for the purpose of replacing siding, carports, and master bedroom windows. Filed in evidence is a copy of the permit.

The landlord submits the work required on the exterior is as follows:

- All Stucco to be removed;
- All sheeting where rot is found to be replaced;
- All studs where rot is found to be replaced
- Replacing building envelop with Tyvek;
- New vinyl siding on all surfaces;
- New master bedroom window;
- New entry porch;
- New carport;
- Add soffits for roof;
- Install/upgrade roof vents; and
- Replace/repair roofs

The landlord submits the work required on the interior is as follows;

- The inside of the exterior wall to have all dry wall removed and replaced with 5/8 drywall;
- New insulation in all exterior walls;
- New vapor barrier for all exterior walls;
- Mold remediation on all exterior majority of the mold issues;
- Mold remediation on interior walls, mainly caused by faulty plumbing;
- New drywall on interior walls where mold remediation was preformed;
- Replace copper plumbing line, old copper lines have been leaking;
- Replace all kitchen cabinets, all 30 units;
- Replace kitchen counter tops, all 30 units
- Replace appliances, all 30 units.
- Repair bathrooms, both upper and lower floors;
- Fix framing issue due to poor plumbing work done initially on townhouse; and
- All floor to have new Vinyl floors installs.

The landlord testified that they have conducted a pre-renovation hazardous material survey and the report determined that the drywall joint compound and the textured ceilings contain asbestos. Filed in evidence is a report.

The landlord stated that they also had an engineer conduct a further inspection and they discovered that some of the existing floor joist have been compromised and they required immediate repair. Filed in evidence is a letter from the engineer dated October 18, 2019.

The landlord seeks to end the tenancy so they can perform the required work.

The advocate for the tenants stated that the primary work is for the exterior of the building and does not require vacant possession. The advocate stated that the tenants are willing to accommodate the landlord, during the repairs and if necessary, they will vacate the premise for a short period of time.

Analysis

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

The Residential Tenancy Policy Guideline 2B states:

RENOVATIONS OR REPAIRS Vacancy requirement Section 49(6)(b) allows a landlord to end a tenancy to renovate or repair a rental unit in a manner that requires the rental unit to be vacant.

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 *Aarti Investments Ltd. v. Baumann*. (2019 BCCA 165), the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient evidence to establish objectively whether vacancy of the rental unit is required.

Renovations or repairs objectively and reasonably requiring vacant possession
Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will: • make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or • result in the prolonged loss of an essential service or facility (e.g., the electrical service to the rental unit must be severed for several weeks). 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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time. As long as the tenant provides the landlord with the necessary access to carry out the renovations or repairs, then the tenancy does not need to end.

I accept the landlord has permits and is required to make repairs to the premises. The primary scope of the work is to the exterior of the building. While I accept this will impact the interior walls that are attached to the exterior of the building, as the drywall must be removed to meet current building codes, such as insulation, vapour barriers and any rot and mould found will need to be repaired. However, this does not impact the entire premise and is temporary. There is nothing in any of the reports that state the premises will be unsafe for the tenant to live there or that the work will take a prolong period.

I accept that the leaking copper pipes must be repaired and the drywall in these areas replaced and any mould found remedy. I am not satisfied that this requires vacant possession and the scope of this work is yet to be determined.

I accept the drywall mud and textured ceiling contains asbestos and when removed will have to be done in compliance with the safety provision set out by the asbestos removal company. This may or may not require the tenants to vacate the rental units for a short period of time

There was no evidence presented by the landlord from the asbestos company that vacant possession of the rental unit is required. It may be possible to isolate the affected areas once known. Further, I do not accept the removal of the asbestos would be for a prolong period. The evidence of the tenants was they will accommodate the landlord, and if necessary, vacate the premise for a short period of time.

I accept some of the joist have been compromised when the structure was built or modified in the past. There is no evidence that the repairs require the rental unit to be

vacant. The joists are primarily located in the basement and does not have any impact on the living space. The engineer report shows the work is required to be done immediately; however, it does not indicate that vacant possession is required.

I accept the landlord may be replacing the kitchen cabinets, countertops, installing new flooring and appliances. I find this is a cosmetic upgrade and does not require vacant possession.

I accept the evidence of the tenants that they will comply with and will accommodate the landlord with any special requirements that are needed for repairs, including vacating the premise for a short period of time.

Considering the above, I am not satisfied that the landlord has met the burden of proof that the rental unit must be vacant to carry out the repairs. While I accept there may be a time during the repairs that the tenants may have to vacate the premise; this is only for a short period of time, which can be accommodated by the tenants. I find the landlords have failed to prove that they require vacant possession of the rental units. Therefore, I grant the tenants' application and cancel the Notices. The tenancies will continue in accordance with the Act.

As I have cancelled the Notices, and it is the tenants' choice to remain in the rental units while the repairs are made, and the tenants must accommodate the landlord during the repairs. I find the tenants are not entitled to make any future claim for loss of quiet enjoyment that are a result of the repairs, as the tenants are required to accommodate the repairs as a provision of their tenancy continuing.

Having found the above, I find it appropriate to make the following orders.

I Order the tenants that they must comply with all notices given to them by the landlord that is to accommodate the repairs required. This may include removal of personal belongings, preparing the unit as instructed, and if necessary, temporarily vacating the rental unit for a short period of time. Failure to accommodate the landlord may give grounds to the end the tenancy for failure to comply with my Order.

Should the tenants require to vacate the premises for a short period of time, the landlord must give the tenants at least one weeks notice and give the tenants the start date and end date that they are required to be absent from the rental unit. This must be a reasonable estimate of time and must be supported, such as instruction from the asbestos

company. This is not an opportunity for the landlord to unreasonable delay work simply to have the tenants remain off the premises to obstruct the tenancy.

Conclusion

The tenants' applications to cancel the Notices are granted.

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: February 10, 2020

Residential Tenancy Branch