Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated December 4, 2019 ("4 Month Notice"), pursuant to section 49(6).

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the manager of the rental unit and he had permission to speak on behalf of the owner of the rental unit. This hearing lasted approximately 37 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 4 Month Notice on December 4, 2019, by way of posting to his rental unit door. The landlord confirmed that he served the notice on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 4 Month Notice on December 4, 2019.

Issues to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2014 with the former landlord. The landlord purchased the rental unit approximately one year ago and continued the tenant's tenancy. Monthly rent in the current amount of $728.40 is payable on the first day each month. A security deposit of $325.00 was paid by the tenant to the former landlord and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed with the former landlord. The rental unit is a one-bedroom apartment in a 42-unit building.

Both parties agreed that the landlord issued the 4 Month Notice, with an effective move-out date of April 1, 2020, for the following reason:

- *…perform renovations or repairs that are so extensive that the rental unit needs to be vacant.*

Both parties agreed that the renovations listed on the 4 Month Notice state: "replace flooring, all baseboards, new appliances, new a/c unit, replace all lights, replace new tub + shower, trim kit shower, new toilet, bathroom cabinets, all new doors in unit, all new paint."

The landlord testified that all 42 units in the same rental building need to be "fully gutted" and renovated. He agreed that the renovations were listed on the 4 Month Notice, above. He maintained that the cost was $15,000.00 per unit, there were no permits required, and notices were posted around the rental building of the work being done. He maintained that because the renovations included plumbing, cabinets, and flooring, the tenant cannot stay in the rental unit and it has to be vacant. He referenced the photographs in the landlord's evidence to support his position. He said that he offered the tenant options, all of which the tenant refused. He maintained that the tenant could move to a new unit altogether or move to another unit temporarily and move back to the rental unit at a higher rental rate of $1,100.00 per month, after the

renovations are completed. He claimed that he offered the tenant different units to move into temporarily, but the tenant refused. He confirmed that the renovations in the rental unit will take a minimum of two weeks.

The tenant disputes the landlord's 4 Month Notice. He testified that he is personally performing the same renovations in someone else's house, and they did not have to move out. The landlord said that this was not the same, since the tenant has a one-bedroom apartment, not a house. The tenant maintained that the trades can be done at different times. He said that he refused the landlord's options because he wanted to wait for the outcome of this hearing. He confirmed that vacant possession was not required. The tenant stated that a decision was made by a different Arbitrator at a previous RTB hearing cancelling a 4 Month Notice for another unit in the same rental building. He did not provide a copy of this decision with this application but offered to provide the file number.

Analysis

I notified both parties that I was not bound by another Arbitrator's decision in a different unit, as the tenant's application would be determined on the facts of his case. I did not take the file number of the other decision from the tenant. The tenant did not provide a copy of the other decision to the landlord or provide notice to the landlord that he was intending to rely on it, prior to this hearing, so I did not consider it at the hearing or in my decision.

According to subsection 49(8)(b) of the *Act*, a tenant may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after he receives the notice. The tenant received the 4 Month Notice on December 4, 2019 and filed his application to dispute it on December 30, 2019. Therefore, the tenant is within the thirty-day time limit under the *Act*. The onus shifts to the landlord to prove, on a balance of probabilities, the basis of the 4 Month Notice.

Subsection 49(6)(b) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.
Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, states, in part at section C "good faith:"

> *If a landlord gives a notice to end tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.*
> …
> *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.*
>
> *The onus is on the landlord to demonstrate that the planned renovations or repairs require vacant possession, and that they have no other ulterior motive.*

The vacancy requirement and examples of renovations are discussed further at section E of Policy Guideline 2B:

> *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 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.*
>
> *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.*

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his onus of proof to show that he issued the 4 Month Notice in good faith to renovate the rental unit in a manner that requires it to be vacant.

I find that this rental unit is not required to be vacant during the renovations, which is a requirement of section 49(6)(b) of the *Act*. The landlord's description of the renovations in the 4 Month Notice and at the hearing includes the cosmetic renovations listed above in Policy Guideline 2B. These include replacing the flooring, baseboards, lights, bathtub, shower, cabinets, toilet, doors, and painting. I agree that replacing appliances, which is at appendix A of Policy Guideline 2B, is listed as minimal and unlikely to require vacancy. I find that it does not require vacancy. I further find that installing new air conditioning in the unit is similar to the electrical and heating upgrades listed in appendix A of Policy Guideline 2B, which I find is minimal and not requiring vacancy. I find that these renovations are not extensive enough to require the rental unit to be vacant. The period of renovations described by the landlord is temporary and short at approximately two weeks.

Accordingly, I allow the tenant's application to cancel the 4 Month Notice. The landlord's 4 Month Notice, dated December 4, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 4 Month Notice is allowed. The landlord's 4 Month Notice, dated December 4, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is 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: March 5, 2020

Residential Tenancy Branch