



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURIEL GARLAND RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy to renovate or repair the rental unit in a manner that requires the rental unit to be vacant (the 4 Month Notice) pursuant to section 49;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlords with the notice of hearing package via Canada Post Registered Mail on March 18, 2020. Both parties also confirmed the tenant served the landlords with the submitted documentary evidence via Canada Post Registered Mail on March 30, 2020. No documentary evidence was submitted by the landlord. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, both parties confirmed the only named landlord should be M.G. Rentals. The named landlord, E.S. is an agent for the M.G. Rentals. On this basis, the tenant's application was amended by consent to remove E.S. as a respondent.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?

Background and Evidence

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

Both parties confirmed the landlord served the tenant with the 4 month notice dated February 27, 2020 on February 28, 2020 by Canada Post Registered Mail. The 4 months notice states that an effective end of tenancy date of June 30, 2020 and the reason selected as:

Perform renovations or repairs that are so extensive that the rental unit must be vacant.

It also states that no permits and approvals are required by law to do this work.

The written details on the notice state:

When we open leaking roof if we need a permit we will have to get it then. We won't know till we open it up. As of today we do not need one.

Planned Work:

Bathrooms, Kitchen, Flooring, open walls that have been leaking, painting etc.

Details of Work:

This unit has not been renovated before & in need of major repair, we have walls & roof that leak, windows that leak. Bathroom walls need to be opened up etc. We need vacant possession to do this work cost effectively & in timely matter. The house needs to be empty for work that needs to be preformed.

[reproduced as written]

The tenant argues that the landlord is only using this notice as a means to "renovict" the tenant and re-rent for a higher rent. The tenant stated that there are currently no repair issues save and except for a water leak that had occurred previously that had left some water damage. The tenant stated that based upon the renovations/repairs listed that there does not need to be vacant possession given to the landlord for the landlord to make any renovations or repairs.

The landlord stated that this rental has been renovated "piecemeal" since 1975. The landlord stated that it is their wish to "gut" the entire 2 bathrooms, kitchen and to open

the walls up to possibly replace the roof structure. The landlord stated that vacant possession is needed to do this work cost effectively within a 6 week period. During the hearing the landlord stated that they do not know what issues lie behind the walls as the tenant has refused the landlord access.

Analysis

Section 49 (6) of the Act sets out that 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 demolish, renovate or repair the rental unit that requires the rental unit to be vacant.

Where a tenant applies to dispute a 4 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 4 Month Notice is based.

In this case, the tenant has argued that based upon the types of renovations/repairs listed on the notice, the landlord does not need vacant possession to complete any renovations or repairs. The landlord has argued that the scope of work requires vacant possession to complete the work within a 6 week period to be cost effective. I also note that the landlord stated in her direct testimony that an inspection has not been done. The landlord admitted that what if any repairs are required have not been determined.

Residential Tenancy Branch Policy Guideline, 2 B, Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use states in part, 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.

In *Allman v. Amacon Property Management Services Inc.* (2006 BCSC 725), the BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the "nature and extent" of the renovations or repairs require the rental unit to be vacant...

As such, I find that the landlord has failed to establish that vacant possession is required based upon the landlord's submissions. Being cost-effective is not a reason for vacant possession. The landlord has failed to provide sufficient evidence that the nature and extent of the renovations/repairs require vacant possession. On this basis, the tenant's application is granted. The 4 month notice dated February 27, 2020 is set aside and cancelled. The tenancy shall continue.

Conclusion

The tenant's application to cancel the 4 month notice is 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: April 20, 2020

Residential Tenancy Branch