Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 28, 2020 (the "Application"). The Tenants applied to dispute a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit dated February 29, 2020 (the "Notice"). The Tenants also sought reimbursement for the filing fee.

This matter came before me for a hearing May 22, 2020. The matter did not conclude in the time set and was adjourned to June 16, 2020 to complete. An Interim Decision was issued May 22, 2020. This decision should be read with the Interim Decision.

The Tenants appeared at the adjourned hearing. The Landlord appeared at the adjourned hearing with the Witness. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

I addressed service of the hearing package and evidence in the Interim Decision.

At the adjourned hearing, the Landlord raised an issue with the timing of service of the hearing package and evidence for the first time. The Landlord referred to section 59(3) of the *Residential Tenancy Act* (the "*Act*") and submitted that the Tenants did not comply with the three-day time limit for serving the hearing package. The Landlord took the position that he received the package April 08, 2020. The Landlord then acknowledged receiving the package April 06, 2020 but took the position that the deeming provisions apply and so he received it April 08, 2020. Both parties agreed the package was sent April 03, 2020. The Landlord acknowledged he had time to review the hearing package and evidence and to respond to it.

Section 59(3) of the *Act* does require an applicant to provide a copy of their application to the respondent within three days of filing it. However, pursuant to section 66(1) of the *Act*, this timeline can be extended.

Rule 3.1 of the Rules of Procedure (the "Rules") requires an applicant to serve the hearing package and their evidence on the respondent within three days of the RTB making the hearing package available.

Here, the hearing package was made available to the Tenants March 31, 2020 to be served by April 03, 2020. This means the Tenants had until April 03, 2020 to send the hearing package and evidence to the Landlord. The Tenants did so. The Tenants complied with the Rules.

I also note that the deeming provisions in section 90 of the *Act* do not apply where a party receives the documents earlier. This is clear from Policy Guideline 12 at page 11. Here, the Landlord received the hearing package and evidence April 06, 2020, not April 08, 2020. The deeming provisions do not change or extend this date.

Further, the purpose of the requirements around the timing of service are to ensure fairness and to ensure the respondent has time to review and respond to the documents served. Here, the Landlord received the hearing package and evidence April 06, 2020, approximately a month and a half before the hearing. The Landlord acknowledged having time to review and respond to the dispute. The timing of service was sufficient in the circumstances and does not raise issues of fairness or prejudice. Therefore, even if the Tenants had not strictly complied with rule 3.1 of the Rules, which they did, I would not have found it appropriate to dismiss the Application or delay the Application due to the timing of service.

I advised the parties of the above and proceeded with the adjourned hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?

3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 18, 2015 and was for a fixed term ending April 30, 2015. The tenancy then became a month-to-month tenancy. Rent at the start of the tenancy was $1,500.00 per month due on the first day of each month. The Tenants paid a $750.00 security deposit.

The Notice was submitted. The grounds for the Notice are that the tenancy is ending because the Landlords are going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Landlord has indicated the rental unit needs to be vacant for 12 weeks. The Landlord has indicated a permit for sewer replacement was issued February 28, 2020 and provided a permit number. The Landlord has indicated that no permits are required for some of the work. The Notice includes the following in relation to the planned work:

Planned Work

- Connect sewer line to the city system
- Replace all old windows in the house
- Change the circulation and layout of the kitchen

Details of Work

- It is not known how long this will take – sewer will not be available
- Casement windows are badly deteriorating – this requires/or may [unknown] due to design flaw in window [unknown] which supports the roof structure

The parties agreed the Notice was served on the Tenants in person February 28, 2020.

The Landlord testified about the three areas of work to be done on the rental unit including the sewer, windows and walls in the kitchen and dining room.

Sewer

The Landlord testified about the sewer work to be done at the rental unit. The Landlord had recently worked on the sewer without permits. The City now wants to inspect the sewer line. The Landlord testified about additional work to be done on the sewer line as well as the work the City will do in relation to the sewer line.

The Landlord testified as follows.

He recently did work on the sewer without the required permits. The City sent an inspection notice indicating the City wants the Landlord to re-do the work and satisfy the City that the work was done to code. He applied for a permit in February. He received the permit April 18, 2020.

The sewer will have to be shut off while the work is being done. He did not have to shut off the sewer last time the work was done because there was a parallel sewer line in place.

The City wants to inspect the line and do pressure tests. The sewer line will have to be opened to do this. Uncovering the line requires breaking up concrete outside of the rental unit. He will have to dig out the line at the property line to show the connection for the inspection. The Landlord acknowledged that digging out the line at the property line will not cause disruption to the Tenants' use of the sewer.

The Landlord testified about possible defects or leaks in the piping that would have to be corrected. I asked the Landlord if there is any evidence at this point that there is something wrong with the sewer line. The Landlord responded that there is no evidence that something is wrong and that he believes he did the work to code.

The Landlord further testified as follows.

Another clean out has to be installed halfway down the line which will interrupt the Tenants' use of the sewer. This work could take two days.

The testing procedure takes time and could uncover a problem. The testing procedure will interrupt the Tenants' use of the sewer. This work could take two days.

The City will have to deal with their section of the line. This work will interrupt the Tenants' use of the sewer. He does not know how long this will take. This work could take a week or could take two days. He should not be doing any work until the City does their work on the line.

When asked whether there was anything else the Landlord knew had to be done, the Landlord said the City will inspect the line and decide.

The Landlord had not submitted a copy of the permit for the sewer work. The Landlord said the Tenants have a copy of the permit. The Tenants advised that they do not have a copy of the permit because the permit had not been issued when they sought a copy of it through the FOI process.

In the Landlords' written submissions, it states that the sewer may be down for as much as three weeks.

The Tenant made the following submissions in relation to the sewer work.

The Landlord did not have a permit for the sewer work prior to the Notice being issued which is required by the Policy Guidelines. She has not seen the permit so cannot speak to whether the proposed work requires vacant possession.

A quote from a plumbing company has been submitted showing that their estimated timeline for the sewer work being proposed is two days. The Tenants could deal with the timeframe for the sewer work. The Tenants have already lived through the concrete around the rental unit being broken up as it has been done quiet a few times in the past.

The Landlord called into question the accuracy of the plumbing company's quote and timeframe for doing the sewer work.

The Witness is a family friend of the Landlords' who is going to help the Landlord with the work. The Witness testified as follows.

There are three places the sewer has to be dug up meaning the cement broken. The sewer has to be inspected and pressure tested. All of this depends on the City. Once him and the Landlord have done their part, the City will schedule a time to have the

sewer tested which could be a week or two. If there are leaks, they will have to look at the line again. They have to put two clean outs in.

Windows

The Landlord testified as follows in relation to the work to be done on windows in the rental unit. There are five windows to be repaired in the rental unit. The window glass is falling out and both interior and exterior work on the windows needs to be done to replace the windows. The window frames need to be restored and the work involves more than just popping in a new window. He will have to make sure the work is structurally sound and will need to investigate to make sure there are no leaks. He will have to check to see if there is moisture in the wall. He is doing the window work and cannot do it in under a month. This work does not require permits. There will be days when there are no windows in the rental unit.

The Tenant testified as follows in relation to the window work. It is unclear whether the window work requires vacant possession. The Tenant referred to Policy Guideline 2(B) and submitted that a factor to consider is whether vacant possession is only required for a brief period.

The witness testified as follows. They will be restoring window frames. There could be damage to the internal structure. The damage to the window frames can only be determined once the windows are out. There will be no windows in the house. The windows are being restore, there will be no change to the structure.

The Tenant asked the Witness if they planned to take all of the windows out at the same time and the Witness replied, “it depends on how things go”.

Walls

The Landlord testified as follows about work that needs to be done in relation to two walls in the kitchen and dining room. The walls are being moved for a better layout. This work will involve removing walls and building walls. The kitchen and dining room will have to be sealed off to keep dust out of the rest of the rental unit. There will be no access to the kitchen. The stove, fridge and dishwasher will have to be moved to do the work. This work could take him a year if he has to commute to the rental unit. Permits are not required for this work because the walls are not structural walls or load bearing walls. The work will be dirty and messy. He does not know what he will come across in doing these renovations.

The Landlords' written submissions state as follows. The work on the walls will require the kitchen, dining room and living room to be blocked off. The walls may have electrical wiring which may be knob and tube wiring. This wiring might be exposed and if it was it could be a safety issue for occupants.

The Tenant testified that she does not feel this work requires vacant possession. During the Tenant's questioning, she testified that she contacted the City about whether permits are required to change walls in the rental unit and the City replied that permits are required to change walls. The Tenant testified that the City said permits are required to move any walls.

The Witness testified as follows. They will be removing the wall from the kitchen. The appliances will have to be relocated. Plaster dust will be a constant problem. The paint dust will probably have lead in it because of the age of the house. There may be electrical issues. There will be damage to the ceiling and floor and the floor will then have to be repaired. There will be no access to the kitchen. They will be removing two walls and putting a wall in in the kitchen and dining room area.

I understood the Witness to take the position that permits are not required for the work on the walls.

Work and Notice Generally

The Landlord submitted that the Tenants claim they can live in the rental unit during the work but that the Tenants complained when he did previous work on the rental unit. The Landlord testified that it would take a year to complete the work if the Tenants were living in the rental unit.

Landlord L.T. testified that one of the reasons the Landlords gave the Notice is because she wants to use the house.

The Landlord testified that he has to stay in the rental unit while the work is being done and testified about the hardship involved in commuting to the rental unit to do the work. The Landlord testified that he intends to occupy the rental unit during the work and his family is going to occupy the rental unit in the future. The Landlord submitted that he really only needed to issue the Tenants a Two Month Notice.

The Tenant submitted that it is unfair to say the Tenants were unhappy about the previous work on the rental unit and that the issue was how the work was done, not the work itself.

The Tenant submitted that the evidence shows the relationship between the Landlords and Tenants has deteriorated and submitted that the Landlords are not acting in good faith in issuing the Notice. The Tenant testified that the Landlord has recently expressed displeasure about the Tenants having children and the increased load on the house as a result. The Tenant submitted that the Landlords just want different tenants.

The Tenant referred to a statement by the Landlord in evidence about how he would have given the Tenants a notice prior to doing the previous sewer work if he had known it was going to be such an issue. The Tenant submitted that the Landlord cannot simply issue the Notice because he is doing the proposed work and wants them out, he needs to meet the requirements.

The Tenant testified that the Tenants travel often and could arrange to be away from the rental unit for a period of time.

The Tenant submitted that the position of the Landlord is that the work will take longer if the Tenants are in the rental unit, but this is not a factor as set out in the Policy Guidelines. The Tenant submitted that the Tenants should be able to live at the rental unit if they can and that whether it would be more efficient for the Landlord to have the rental unit empty is not a factor.

In response, the Landlord submitted that time is a factor and the rental unit is his house. The Landlord submitted that the RTB Policy Guideline about these issues is not written by someone who has ever done the work and “is nonsense”.

I asked the Landlord to explain how he would live in the rental unit if it was going to be unlivable as claimed. The Landlord testified as follows. He can live without a kitchen for a period of time. He can run to the community center to use the washroom. He can put a portable washroom on the property if necessary. It will not be pleasant but is workable “for a single guy”.

The Witness testified as follows. It would be impossible for anyone to live in the rental unit while the proposed work is being done, particularly people with children. The Tenant asked the Witness how the Landlord will live in the rental unit if it will not be livable. The Witness replied as follows. They don’t have children so they can go

downtown to eat. They will wear masks. They will already be “filthified”. It won’t be enjoyable. It will be like camping.

As stated, I have reviewed all of the evidence submitted. I have also read the Landlords’ written submissions and chronology. The above covers the relevant evidence before me.

Analysis

The Notice was issued under section 49(6) of the *Act* which states:

> (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…
>
> > (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Pursuant to section 49(8)(b) of the *Act*, the Tenants had 30 days to dispute the Notice. There is no issue the Tenants received the Notice February 28, 2020. The Tenants filed the Application March 28, 2020, within the 30-day time limit.

Pursuant to rule 6.6 of the Rules, it is the Landlords who have the onus to prove the grounds for the Notice.

Policy Guideline 2B relates to ending a tenancy under section 49(6) and states:

> **B. PERMITS AND APPROVALS REQUIRED BY LAW**
>
> When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.
>
> The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued…

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…

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…

E. 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.

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.

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…

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

Appendix A sets out a table of common renovations and repairs including the disruption to tenants and whether they require vacancy. It is simply a guide. It shows that exterior window or glass replacement usually requires minimal disruption to tenants and is unlikely to require vacancy. It shows that demolishing a non-load bearing wall will usually cause minimal disruption to tenants and is unlikely to require vacancy.

I note at the outset that the issue before me is not what notices to end tenancy the Landlords could have issued. The issue before me is whether the Landlords have proven the grounds for the Notice issued to the Tenants.

I have considered each aspect of the proposed work and find as follows.

Sewer

The Landlords have failed to prove the ground for the Notice in relation to the sewer work for the following reasons.

There is no issue that a permit is required for this work as all parties agreed on this.

The Landlord testified that he received the permit in April. Therefore, the Landlords did not have the permit on February 28, 2020 when the Notice was issued. The Landlords failed to comply with Policy Guideline 2B in this regard.

The Landlord did not submit a copy of the permit he says he obtained in April as required by Policy Guideline 2B. In the absence of the permit being in evidence before me, I am not satisfied the Landlord has obtained the necessary permit for the proposed work. Nor can I determine whether the permit covers an extent and nature of work that objectively requires vacancy of the rental unit.

Further, I am not satisfied based on the evidence submitted that the sewer work requires vacant possession of the rental unit.

The only work I am satisfied needs to be done in relation to the sewer line is the line being exposed, the Landlord installing one clean out, the City inspecting the line and the City conducting pressure testing of the line. I find the remainder of the issues raised by the Landlord and Witness are possibilities and not work that the Landlord or Witness can say at this point needs to be done. I note that the Witness testified that two clean outs have to be installed. I am not satisfied this is accurate as the Landlord only testified that one has to be installed.

I asked the Landlord about the timelines for the work that would disrupt the Tenants' use of the sewer. The Landlord outlined a timeline of six days at the low end and eleven days at the high end. I acknowledge that the Landlord provided different timelines in his verbal testimony and written submissions. Further, the Witness provided a different timeline. I am not satisfied based on the evidence provided of the actual timeline. I am not satisfied the Landlord or Witness know the actual timeline given the conflicting testimony and evidence provided on this point.

In any event, I consider based on the Landlord's testimony that the work which will disrupt the Tenants' use of the sewer will take six days at the low end and elven days at the high end. This is not a long period of time. It is certainly not long enough to find

that the tenancy must end over it. Further, I am not satisfied based on the evidence provided that the sewer would need to be shut off for a full six to eleven consecutive days as the Landlords have not submitted sufficient evidence to show this would be necessary.

I note that I do not accept that any of the work on the sewer line that does not disrupt the Tenants' use of the sewer requires vacant possession as the work is being done outside and would have little impact on the use of the rental unit.

Windows

The Landlords have failed to prove the ground for the Notice in relation to the window work for the following reasons.

The Landlord takes the position that the window work does not require permits. Pursuant to Policy Guideline 2B, the Landlord should have submitted further evidence to support this. I am not satisfied based on the testimony of the Landlord and Witness alone about what permits are or are not required. I am not satisfied either is a certified tradesperson. I note that both did the previous sewer work without the necessary permit which is why the further sewer work now needs to be done. In the circumstances, I would expect some documentary evidence to support that permits are not required.

Further, the position that the work does not require permits raises the question of whether the Landlords intend in good faith to renovate or repair the rental unit in a manner that requires vacant possession. I am not satisfied based on the evidence provided that the window work does require vacant possession.

The Landlord testified that five windows in the rental unit need to be replaced. This on the face of it is not so extensive that it is clear vacant possession is required. Five windows is not many. Windows can be replaced with little disruption to the use of the rental unit. Window replacement does not disrupt services.

I am not satisfied the window replacement will make it unsafe for the Tenants to live in the rental unit. There was some suggestion by the Landlord and Witness that there will be a period of time where there are no windows in the rental unit. The Landlord testified that he intends to stay in the rental unit during the work. I do not accept that the Landlord would take out all five windows at once and leave the window openings open without any covering over them for an extended period of time, open to the elements

and people passing by. This does not accord with common sense. Nor does it make sense that the Landlord would do this if he was staying in the rental unit. If the Landlord can replace the windows in a manner that makes it reasonable for him to stay in the rental unit, I am satisfied the window replacement can be done in a manner that makes it reasonable for the Tenants to live in the rental unit.

I note that Appendix A of Policy Guideline 2B supports that window replacement usually causes minimal disruption and is unlikely to require vacant possession. I find that the nature of the work, the location of windows in a rental unit and the use of windows in a rental unit are such that window replacement should not require vacant possession of the rental unit for an extended period of time. The Landlords have not submitted sufficient evidence to show the window replacement in this situation is such that it does require vacant possession, let alone for an extended period of time.

Walls

The Landlords have failed to prove the ground for the Notice in relation to the work on the walls for the following reason.

The Landlord testified that the work on the walls does not require permits. The Tenant disputed this and testified that she spoke to the City who said permits are required to move any walls.

Pursuant to Policy Guideline 2B, the Landlord should have submitted further evidence to support his position that permits are not required. As stated, I am not satisfied based on the testimony of the Landlord and Witness alone about what permits are or are not required. I am not satisfied either is a certified tradesperson. I again note that both did the previous sewer work without the necessary permit. In the circumstances, I would expect some documentary evidence to support that permits are not required such as confirmation from the City.

In the circumstances, I am not satisfied permits are not required for the work on the walls and therefore am not satisfied the Landlords have the grounds to end the tenancy for this proposed work.

Work and Notice Generally

I note that I have not considered whether the proposed work together requires vacant possession because I am not satisfied the Landlords have the necessary permits for the

sewer work and work on the walls and therefore, I would not uphold the Notice based on this work in any event.

I also note again the Landlord's testimony that he intends to live in the rental unit while the proposed work is being done. I do not accept that the rental unit needs to be vacant, meaning empty, during the work when the Landlord himself intends to occupy the rental unit.

Further, I accept that some of the Landlord's submissions were focused on it being easier and more efficient to complete the work if the Tenants are not living in the rental unit. As stated in Policy Guideline 2B, the Landlord cannot end the tenancy to renovate and repair the rental unit just because it would be faster, more cost-effective, or easier to have the rental unit empty.

Summary

In the circumstances, I am not satisfied the Landlords complied with Policy Guideline 2B in relation to having a permit for the sewer work prior to issuing the Notice. I am not satisfied the Landlords currently have the proper permit in place. I am not satisfied the sewer work requires vacant possession.

I am not satisfied the window work does not require permits. I am not satisfied the window work requires vacant possession.

I am not satisfied the wall work does not require permits and the Landlords do not have permits for this work.

Given the above issues, I find the Landlords have failed to prove the grounds for the Notice. I therefore cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Filing Fee

Given the Tenants were successful in the Application, I award the Tenants reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct $100.00 from the next rent payment.

Conclusion

The Landlords have failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in the Application, I award the Tenants reimbursement for the $100.00 filing fee. The Tenants can deduct $100.00 from the next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 19, 2020

Residential Tenancy Branch