



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TENANT JS: CNL-4M, FFT
TENANT CG – CNL-4M, LRE, OLC, FFT
TENANT MSS – LRE, CNL-4M, OLC
TENANT SSZ – CNL-4M, FFT

Introduction

This is a joined application of the four tenants who have all applied for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Four Month Notice to End Tenancy for Landlord’s Use of Property dated July 1, 2020; two of the tenants also claim other relief. The matter was adjourned from a hearing before an Arbitrator on September 8, 2020.

The matter was scheduled as a teleconference hearing. The landlord and four tenants attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the outset, the tenants MSS and SSZ stated they had vacated the unit; they had received the statutory compensation and security deposit refund. Accordingly, the tenants requested that their applications be withdrawn.

Therefore, the applications by the tenants MSS and SSZ are dismissed without leave to

reapply.

Preliminary Issue # 2

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant CS's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice. I find that the tenant's primary application pertains to disputing a notice to end tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenant CS's claims, except for the tenant's application to dispute the landlord's Notice and reimbursement of the filing fee, are dismissed. I make no findings with respect to these claims. I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Issue(s) to be Decided

Are the tenants JS and CG entitled to cancel a Four Month Notice to End Tenancy for Landlord's Use of Property dated July 1, 2020 and obtain an award for reimbursement of the filing fee?

Background and Evidence

The landlord and tenant JS testified that the tenancy began on December 1, 2010 and is on a month to month basis. Rent in the amount of \$725.00 is to be paid to the landlord by the first day of each month. The tenant paid the landlord a security deposit in the amount of \$362.50.

The landlord and tenant CG testified that the tenancy began twenty years ago and is on a month to month basis. Rent in the amount of \$650.00 is to be paid to the landlord by the first day of each month. The tenant paid the landlord a security deposit in the amount of \$237.50.

The landlord purchased the building and took ownership/ possession on July 1, 2020. The landlord testified there are 4 units in the building, 2 of which are now vacant.

The Landlord issued the tenants a Four Month Notice dated July 1, 2020 in the RTB form. The Notice provides the following reason for ending the tenancy:

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

The Notice does not state how long the unit must be vacant. The effective date of the notice is stated to be October 31, 2020.

The Notice indicates that no permits or approvals are required by law to do the work. The landlord submitted that the landlord confirmed with the City that a permit is not required to perform the planned renovations. The landlord did not provide a copy of any supporting documentation from the City or a copy of relevant by-laws.

With respect to the planned work, the Four Month Notice provides as follows:

Mold in bathroom, entire bathroom is being redone. Toilet leaking/seeping. Bathroom venting needs to be installed. Entire bathroom being redone. Kitchen venting needs to be installed. Entire kitchen being redone. All new flooring being installed.

The Four Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person.

The tenants disputed the Four Month Notice within the required time period.

The landlord submitted a 98-page building inspection document which describes the condition of each unit in the building and includes photographs. The landlord acknowledged that the document does not include a description of the work to be done; it also does not include the information that the units must be vacant for the planned renovations to occur.

The landlord submitted it would be unsafe for the tenants to remain in the unit during the renovation as there may be hazardous or unsafe construction materials present. The landlord did not provide documentary evidence containing a description of the renovations, the anticipated hazards in the building, testing results for hazards, or

estimated time frames to perform the work.

The landlord did not state who would be performing the work and said they have received estimates only; the estimates were not submitted. The landlord did not provide documentary evidence with respect to any aspect of the proposed renovations.

The tenants submitted that the first matter under consideration is whether the landlord intends to renovate in a manner that requires vacant possession. The tenants claimed that the renovations planned are cosmetic only and they do not have to move. Secondly, the tenants asserted that their investigation into the matter has led them to the conclusion that City permits are required.

The landlord submitted that the renovations would result in a prolonged renovation period during which occupancy by the tenants was impossible.

Analysis

The parties submitted considerable testimony and documents in an 86-minute hearing. Not all this evidence is referenced. Only key aspects of the evidence are mentioned in my decision.

Section 49 (6) of the Act provides 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 do any of the following:

- a. *demolish the rental unit;*
- b. *renovate or repair the rental unit in a manner that requires the rental unit to be vacant;*
- c. *convert the residential property to strata lots under the Strata Property Act;*
- d. *convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;*
- e. *convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*
- f. *convert the rental unit to a non-residential use.*

Residential Tenancy Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding renovations (emphasis added).

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.***

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose.

...

*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.***

Regarding the landlord's claim that the renovations or repairs objectively and reasonably require vacancy, the Guideline states as follows:

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.

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

I have reviewed the landlord's testimony and evidence, which did not include a city bylaw or confirmation from the City that no permits are necessary. I find the landlord has not met the burden of proof necessary to establish 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, and no permits are required. I also find that the landlord has not met the burden of proof that the work requires the vacancy of the unit in a way that necessitates ending the tenancy. I find there is no evidence the units are unsafe to live in during renovations or that essential services, such as water, would be interrupted.

I therefore grant the tenants' application to cancel the Four Month Notice. The Notice is of no force or effect.

The tenancy shall continue until ended in accordance with the agreement and the Act.

As the tenants have been successful in this application, I award **each** applicant JS and CG reimbursement of the \$100.00 filing fee which may be deducted by each of them from monthly rent on a one-time basis only.

Conclusion

The tenants' applications to cancel the Four Month Notice dated July 1, 2020 are granted. The tenancy shall continue for each applicant JS and CG.

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: October 27, 2020

Residential Tenancy Branch