



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, CNL-4M, OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 24, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion (the "Four Month Notice") dated February 27, 2021;
- an order for regular repairs;
- an order that the Landlord comply with the *Act*.

The Tenants' Representative R.D., the Tenants' Advocate S.C., the Landlord, the Landlord's Agent T.R., and the Landlord's Counsel D.M. attended the hearing at the appointed date and time.

At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised with respect to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the Application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Four Month Notice. The Tenant's request for regular repairs, and for an order that the Landlord comply with the *Act* are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2005. Currently, rent in the amount of \$1,128.00 is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 which is currently being held by the Landlord.

The Landlord's Counsel stated that the Tenants were served in person with the Four Month Notice on February 27, 2021 with an effective vacancy date of June 30, 2021. The Tenants confirmed having received the Four Month Notice on the same day. The Landlord's reason for ending the tenancy on the Four Month Notice is;

"To perform renovations or repairs that are so extensive that the rental unit must be vacant"

The parties submitted a copy of the Four Month Notice which explains the details of the work;

"Planned work: Bathroom Renovation, Kitchen Renovation, General."

"Details of work: Replace tub and sink, add new faucets and tap, change the current tiles on wall and floor, new toilet, all new kitchen cabinets, new sink and taps, new counter tops, new appliances, and backsplash, remove all carpeting, add new tile, replace baseboard heaters, change doors and windows, new paint, new lighting fixtures, replace vinyl paper on sundeck and new railing."

[Reproduced as Written]

The Landlord's Counsel made the following statements in support of the Four Month Notice:

The rental property is a four-plex residential building. The Landlord has already completed renovation on the bottom two units. The Landlord intends on renovating the two upper units, one of which is currently being occupied by the Tenants. The Landlord intends on completing much of the renovation work himself. The timeline on the above-mentioned work is estimated to take two to three months and cost around \$80,000.00 to complete.

The Landlord requires vacant possession as it is a complete renovation of the rental unit, which will result in the water being temporarily shut off to sinks, toilets and bathtub while they are being replaced, which could take 2 to 8 weeks.

The Landlord provided a plumbing permit which states "*Scope of permit to be confirmed on site by plumbing inspector existing site inspections required*". The Landlord also provided Plumbing contract, receipts and quotes in support of the proposed work. Furthermore, the Tenant's belongings would need to be removed in order to replace the flooring. The Landlord's Counsel stated that there would be noise, building materials and dust which may impact the Tenants. The Landlord may have to test for asbestos and also intends on replacing windows, which may result in plywood being put up as a temporary measure.

The Tenants have applied to cancel the Four Month Notice. The Tenant's Representative responded by stating the following;

The Landlord does not require vacant possession of the rental unit in order to complete the proposed renovations. The Landlord is able to complete the renovations in stages, only impacting portions of the rental unit at a time. The Landlord does not need to shut the water off to the entire rental unit, only to the area that is being worked on. The Tenants are agreeable to accommodating the renovation.

The Tenant's Representative occupies the other upper rental unit at the residential property. She has offered to open her home to the Tenants while the Landlord performs the renovations in order to maintain the tenancy. The Tenants are of the impression that the Landlord is only seeking to end the tenancy as they are wanting to re-rent the rental unit for a higher amount of rent.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord served the Tenant with the Four Month Notice in person on February 27, 2021 with an effective vacancy date of June 30, 2021. The Tenants confirmed having received the notice on the same date. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the *Act*.

According to subsection 49(8)(b) of the *Act*, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within 30 days after the date the Tenant receives the notice. The Tenants received the Four Month Notice on February 27, 2021 and filed their Application on March 24, 2021. Therefore, the Tenants are within the 30 day time limit under the *Act*.

According to the Residential Tenancy Policy Guideline(the "Policy Guideline") 2B When ending a tenancy under section 49(6) of the RTA, a landlord must have all necessary permits and approvals that are required by law before they 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.

According to the Policy Guideline 2B, the permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. In this case, I am satisfied that the Landlord has obtained a plumbing permit, however the plumbing permit itself does not outline the extent and nature of the work that require vacancy of the rental unit.

Instead, I accept that the Landlord has provided a written contract which was provided by the Plumber which outlines the extent of the work which includes: *"Renovation for 2 toilets, 1 tub, 1 kitchen sink, 2 washroom sinks, change all the hot water heating baseboards, when kitchen cabinet is removed after back in two weeks rough in will be done & when counter top & tile then finishing for plumbing fixtures in two weeks & inspection & Deposit 2000 received"*

The Landlord has also provided quotes and invoices in support of the other renovations which are listed on the Four Month Notice.

Policy Guideline 2B further elaborates on the vacancy requirement; Section 49.2 allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. Any period of time in which the unit must be vacant is sufficient to meet this requirement.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”. Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

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 that require the rental unit to be vacant could include those that will:

- make it unsafe for the tenants to live in the unit (e.g., the work requires extensive asbestos remediation); or
- result in the prolonged loss of a service or facility that is essential to the unit being habitable (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.

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 backsplashes, cabinets, or vanities.

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court 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.

If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.

Policy Guideline 2B offers an Appendix “A” which outlines common renovations types, and indicates whether there is likely to be a disruption to the Tenants or if it is likely to require vacancy.

In this case, I am satisfied that the Landlord intends on conducting renovations to the rental unit. I accept that the Landlord intends to; *Replace tub and sink, add new faucets and tap, change the current tiles on wall and floor, new toilet, all new kitchen cabinets, new sink and taps, new counter tops, new appliances, and backsplash, remove all carpeting, add new tile, replace baseboard heaters, change doors and windows, new paint, new lighting fixtures, replace vinyl paper on sundeck and new railing.*

While the Landlord has indicated that the water to some of the facilities would be shut off for a period of time during the renovation, I am satisfied that the Tenants are willing to be flexible with the renovation schedule and have alternative plans on using the facilities in the neighbouring rental unit during the renovations if necessary.

I find the renovations proposed by the Landlord are listed in Policy Guideline 2B Appendix A as having minimal impact on the Tenants and are unlikely to require vacancy. As such, I find that it is possible for the Landlord to complete the renovations without the need to end the tenancy.

I find the Landlord has provided insufficient evidence to demonstrate that any such repairs are so extensive that the rental unit *must* be vacant in order to perform these repairs. I find that these renovations are Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit and that Landlord has provided insufficient evidence to demonstrate that the renovations are extensive enough to require a rental unit to be vacant.

In light of the above, I cancel the Four Month Notice, dated February 27, 2021. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant’s application is successful. The Four Month Notice issued by the Landlord dated February 27, 2021 is cancelled. The tenancy will continue until 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: July 14, 2021