



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, CNOP

Introduction

This Review Hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, and for an order setting aside an Order of Possession.

The parties attended a hearing on June 3, 2021, which reconvened on June 17, 2021 and a Decision was rendered on June 21, 2021 wherein the landlord was successful in obtaining an Order of Possession.

The tenant filed a Request for Review of the Decision and Order on the grounds that the tenant had new and relevant evidence that was not available at the time of the hearing, and that the Arbitrator's Decision was obtained by fraud. The date of the Review Consideration Decision is June 30, 2021 which orders this Review Hearing. The *Residential Tenancy Act* specifies that following a Review Hearing I may confirm, vary or set aside the original Decision and/or order.

The landlord and the tenant attended the Review Hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2018 and reverted to a month-to-month tenancy after November 30, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a lower suite in a 4-plex, which contains 2 upper 3 bedroom suites and 2 lower suites with 2 bedrooms each. A copy of the tenancy agreement has been provided as evidence for this hearing.

On January 24, 2021 the landlord served the tenant with a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the Notice) by email and by placing a copy in the tenant's mailbox. A copy of the Notice has been provided for this hearing and it is dated January 24, 2021 and contains an effective date of vacancy of May 31, 2021. The reason for issuing it states: To perform renovations or repairs that are so extensive that the rental unit must be vacant, and is anticipated to take 4 to 5 months.

The landlord testified that renovations have been started in 2 other vacant units and are still not completed. All tenants were given a notice to end the tenancies and 3 tenants filed disputes. However after they were served a drywaller pointed out that there could be asbestos. Samples were taken on March 29, 2021 which confirmed asbestos and the landlord received the reports on April 8, 2021 and notified the 3 tenants with a letter about asbestos. Copies have been provided for this hearing. The landlord settled the dispute with one tenant who resided in an upper suite by offering a lower suite. Another tenant moved out.

No permits are required. Originally, the contractor contacted the City before any notices to end the tenancies were given, and gave a list of what was to be done, and the City advised that no permits were required. There will be no structural changes, and no

movement of plumbing, other than regular maintenance. The landlord also contacted the City on April 12, 2021 setting out some of the upgrades planned, and received a reply on the same day stating that based on the landlord's list, permits would not be required. A copy of the string of emails has been provided for this hearing.

A permit for removal of asbestos is not required. That part was handled by a construction service company who had to go by WorkSafe BC regulations and provide reports, but no City permits are required.

The landlord was asked why the letter given to the tenants about the scope of work and the email to the City later are different, and why the list given to the tenants was not sent to the City. The landlord replied that the company outlined the scope for the City and the letter the landlord sent to tenants was only from the landlord's memory after talking to the contractor. There was a difference because the landlord didn't have the original list from the contractor; nothing other than on the contractor's list is done. The list from the contractor has been provided for this hearing and is dated February 20, 2021. A copy of the letter provided to the tenants has also been provided.

The tenant testified that the tenants received a detailed list that was so extensive that it would make sense to evict. However, the scope of work on the Notice and subsequent email to the City is all very minimal; not detailed like the lists provided to tenants.

The tenant sent the list from the landlord to the City by email, and the City employee replied about electrical and moving plumbing, which would trigger permits being required for those items, and suggested a building inspector verify the work. A copy of the email from the City employee has been provided for this hearing. The tenant testified that it has now been handed over to a building inspector, and an email from that person has also been provided for this hearing. His email dated June 15, 2021 says that he was not able to share information but that the matter is being pursued with the property owner.

The tenant has no current updates from the City, but they got involved because the lists from the tenant and the landlord were very different, and an investigation about the scope of work and what permits might be required. The tenant testified that the list she received would require permits, for such things as pot lights, new flooring, baseboard heaters, sound proofing in lower units, a hot water tank removal and reinstalled in the utility room and the washer and dryer being moved to the pantry. The City employee said that based on the list that the tenant forwarded, permits would be required. The landlord didn't provide the extensive list to the City. The list is very extensive, mostly

minor, but a few trigger needs for permits. A landlord must have permits prior to issuing the notice to end the tenancy.

Analysis

I have reviewed all of the evidentiary material.

The landlord testified that the contractor contacted City before the Notice was given to the tenants, and gave a list of what was to be done and was told no permits were required. The landlord has not provided any evidence of that, or what was on the list given to the City.

The list of upgrades that the landlord mentioned in the email to the City dated April 12, 2021 includes replacing kitchen cabinets, countertops, sinks and taps, bathroom tub/shower and toilet, as well as flooring, drywall, windows, doors, ceiling surfaces, sun decks, siding, fencing and the driveway. The City employee replied that based on the landlord's list, no permits were required and that: "Typically structural changes and new plumbing locations will trigger a permit."

I have also reviewed the list that the landlord provided to the tenants which includes the same list as well as installing 30+ pot lights per unit, baseboard heaters, soundproofing in the lower units, the hot water tank relocated from the bedroom closet to the utility room, moving the washer and dryer to the pantry. The emails from the City stating that no permits are required refer only to the work set out in the landlord's email, which is far from complete. Further, the email from the landlord to the City does not mention installing pot lights or baseboard heaters.

I also accept the undisputed testimony of the tenant and evidence that the building inspector replied to the tenant's text message stating that the matter is currently being pursued with the property owner.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Further, a landlord may not issue a notice to end a tenancy for renovation or repair until all required permits have been obtained.

Considering the response from the City employee stating that new plumbing locations will trigger a permit, and the landlord's intention of moving a hot water tank and washer, and electrical work, I am not satisfied that the landlord has established that no permits are required.

Therefore, I set aside the original Decision and Order of Possession dated June 21, 2021.

The Notice to end the tenancy is cancelled, and the tenancy continues.

Conclusion

For the reasons set out above, I hereby set aside the original Decision and Order of Possession dated June 21, 2021.

The Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit dated January 24, 2021 is hereby cancelled and the tenancy continues.

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: August 09, 2021

Residential Tenancy Branch