Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLAGE ON THE LAKE DEVELOPMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M FFT

Introduction

The tenant disputes a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). In addition, the tenant seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

Attending the hearing was the tenant, the tenant's advocate, the landlord's agent, and an employee for the landlord. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order cancelling the Notice?

2. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in June 2011 and monthly rent is $1,083.20. A copy of a newer (from 2019) tenancy agreement was in evidence. In respect of the Notice, a copy of which was in evidence, the landlord confirmed that it had been served on April 6, 2021.

It was explained by the landlord's agent (hereafter the "landlord") that, "to be honest," there were two roads down which the landlord could have gone in order to end the tenancy and have the tenant leave. One option was to issue a Two Month Notice to End

Tenancy for Landlord's Use of Property. The landlord explained that the rental unit is owned by a father and son, and the elderly father would, at some point, like to move into and occupy the rental unit. However, the landlord explained that they did not want to put the tenant out in such a short timeframe, especially considering the difficult rental market in the surrounding area (the rental unit is located in a town in the south Okanagan). So, instead of issuing a two-month notice, they instead issued the Notice, which would give the tenant four months' notice.

The landlord explained that the building is 13 years old, and the rental unit requires "significant and substantial renovations." Part of the renovations would necessitate a gutting of the property because the tenant owns a cat, and the owner's wife is allergic to cats. Any evidence of the cat's presence will need to be removed. In addition, the kitchen will need to be gutted, new flooring put in, new fixtures, new cabinets, an update to the HVAC, and a completed paint job. "This work cannot be done with anyone in residence," the landlord added.

It should be noted, the landlord added, that even though renovations will need to be done, the owners (that is, the elderly father and his wife) do intend to reside in the rental unit after those renovations are completed. It is estimated by the landlord that the renovations will take approximately three to four weeks. This estimate is based on what various contractors have told the landlord.

The tenant and her advocate spoke about the rental unit being "spotlessly clean" and they have no idea why renovations are necessary. They referenced a previous dispute involving the landlord issuing a two-month notice, and for which the landlord was unsuccessful at arbitration. Moreover, the advocate argued that this Notice may simply be "another way to get her out of here for more rent." Last, the advocate – who mentioned that he is a tile setter – argued that the tile work alone (which is just one of many pieces of the planned renovations) would only take a few days.

In rebuttal, the landlord pointed out that whether the renovations are required is not a relevant issue. Rather, the issue is whether renovations require a tenant to be vacant from the rental unit. In this case, she submitted that the renovations are to take three to four weeks. The landlord further added that the entire renovation has to be done all at once, and that there are no contractors who are willing to work on one room at a time.

In their brief rebuttal, the tenant's advocate submitted that "nobody's ever walked into [the rental unit] to get a quote.

Analysis

Where a tenant applies to dispute a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based.

In this case, the Notice was issued under section 49(6)(b) of the Act (as it was in force when the Notice was issued on April 6, 2021; subsection 49(6)(b) of the Act was repealed on July 1, 2021). This section stated 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: [. . .] (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The landlord testified that the renovations referenced in the Notice are "significant and substantial" and will be "lengthy and [the rental unit] cannot be occupied while the work is underway." The tenant disputes this and argues that "no renovations are needed" and that the Notice is likely just another way to get the tenant to leave so that more rent may be charged.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the renovations to the rental unit must be done in a manner that requires the rental unit to be vacant.

What is of significant importance in the case before me is that the landlord neither submitted nor provided any supporting documentary evidence that the renovations would actually require vacant possession. Nor did the landlord call any contractors as witnesses to explain why, exactly, the renovations would require the tenant to be vacant for a month. Indeed, I find it rather odd that (as stated by the tenant's advocate) "nobody's ever walked into the rental unit to get a quote." From this statement, which was not disputed or mentioned by the landlord, it must be inferred that contractors may have not even physically visited the rental unit before presumably giving their information to the landlord.

It is not lost on me that perhaps the owners very much want to undertake renovations, and that is certainly within their right to do so. However, without any supporting

evidence I am not persuaded that the tenancy needs to be ended for the purposes of whatever renovations the landlord or owner plans on undertaking.

Taking into careful consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving a section 49(6)(b) ground under which the Notice was issued. Accordingly, the Notice is ordered cancelled effective immediately. The Notice is thus of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

As the tenant was successful in their application, they are granted recovery of the cost of the application filing fee. To that end, and pursuant to section 72(2)(a) of the Act, the tenant is authorized to deduct $100.00 from the rent payable on October 1, 2021.

Conclusion

The tenant's application is hereby granted.

The Notice, dated April 6, 2021, is cancelled and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 3, 2021

Residential Tenancy Branch