



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL

Introduction

This matter dealt with an application by the tenant to cancel a notice to end tenancy as issued by the landlord on September 17, 2008. The notice to end tenancy was issued with an effective date of ending the tenancy of November 30, 2008.

Both the landlord and the tenant attended at the hearing and were afforded the opportunity to present evidence. I also advised both parties that I would consider their oral evidence as well as any written documentation that had been submitted prior to the hearing, in reaching my decision.

Issue(s) to be Decided

Is the notice to end tenancy valid as issued?

Background and Evidence

The notice to end tenancy cites the following reason for ending the tenancy:

“the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant”

The evidence of the landlord and his agent at the hearing is that the rental unit is a one bedroom unit and is about 400 square feet in size. The landlord intends to remove the current flooring in the unit and replace it with a new sub-floor and new flooring material. The landlord also intends to install insulation between the levels of the building while the flooring is removed. The landlord states that there is no accurate estimate of the time required for the work other than a rough guess of about one month.

The landlord states that the necessary permit to carry out the work was issued on October 6, 2008. The landlord when questioned also stated that there had not been any discussion with the tenant as to any other methods to carry out the work without ending the tenancy, such as temporary or voluntary relocation by the tenant.

The tenant's evidence is that the notice is invalid as the necessary permits were only issued on October 6, 2008, which was well after the date the notice to end tenancy was issued. The tenant also indicated that as he wished to remain in the rental unit that he was open to discussion with the landlord to explore alternatives, but that no discussions had been offered.

Analysis

The ending of a tenancy is a serious matter. The intent of this particular piece of legislation is to allow landlords to carry out repairs and upgrades of a significant nature which require the property to be vacant. Many times such repairs can be carried out with a degree of inconvenience that does not require "vacant" possession, and recent court cases have ruled that such options should be explored as alternatives. The ending of a tenancy requires a significant disruption to the life of a tenant, when other options may be available. I am not convinced that the necessary work can not be carried out without other options being explored and that "vacant" possession is the only option.

I also note that the legislation requires that all of the necessary permits must be in place prior to the issuance of the notice to end tenancy. In this matter the permit was issued well after the notice was issued and served.

Conclusion

I find that the failure to obtain the required permits prior to the issuance of the notice is a fatal flaw and as such I cancel the notice to end tenancy.

The tenancy will continue.

Dated: October 27, 2008