



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy dated September 29, 2008 and effective November 30, 2008. Both parties were represented at the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The parties agreed that on September 29, 2008 the tenant was served with a 2-month notice to end tenancy. The notice states that the landlord has all the necessary permits and approvals required by law to repair the rental unit in a manner that requires the rental unit to be vacant and that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The parties further agreed that the rental unit is located on the first floor of a multi-storey apartment building.

The landlord's agent testified that the rental unit is actually an illegal suite in that the building is zoned for 15-units and that the suite is a 16th unit and therefore an illegal unit. The agent further testified that because the owner cannot sell the suite, it will be converted into an office for a caretaker, which will make the remaining units more attractive to prospective buyers as they are assured of the continued presence of maintenance staff. The owner of the building submitted a letter into evidence in which he stated that he wishes to convert the unit to an office/suite for a caretaker. The landlord's agent testified that the owner may apply for rezoning in the future to allow the suite to be used for residential purposes. The landlord's agent further testified that

the owner planned to remove carpets, appliances and cupboards from the rental unit and that a wall may be moved as well. The landlord's agent contended that no permits were required to his knowledge and that if an electrical permit were required, it could be obtained the same day an application for the permit was made.

The tenant argued that if a wall were to be removed, it could potential raise a structural issue which would require a permit. The tenant further argued that the property manager has repeatedly told him that the amount of rent he is paying is far too low and called the good faith of the landlord into question, suggesting that the landlord wishes to renovate in order to re-rent the rental unit at a rate higher than that which the tenant is currently paying.

The tenant provided a transcript of a telephone conversation between the tenant and the landlord's agent in which the agent acknowledged that he did not know what plans the owner had for the rental unit. The tenant argued that the agent's lack of knowledge of the owner's intentions was conclusive proof of a lack of good faith. During the hearing the tenant played a recorded conversation between himself and an employee of the owner. In that conversation the employee stated that as far as she knew, there was no schedule for a new caretaker to begin working in the building. The tenant offered this as further proof that the landlord had an ulterior motive which suggested a lack of good faith.

Analysis

Sections 49(6)(b) and (e) of the Act, pursuant to which the notice to end tenancy was issued, provide as follows:

- 49(6) 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:
 - 49(6)(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - 49(6)(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

For the issue of renovation, the landlord must show that that (a) he has all the necessary permits and approvals required by law; (b) he intends in good faith to renovate; and (c) the intended renovations require the rental unit to be vacant.

For the issue of converting the unit for use by a caretaker, the landlord must show that (a) he has all the necessary permits and approvals required by law; and (b) he intends in good faith to convert the rental unit for use by a caretaker.

With respect to the renovations, the landlord has not offered evidence showing that there have been consultations with or estimates from contractors to perform the work the landlord claims he intends to complete. Such consultation would have revealed whether permits would be required for any electrical work and the proposed movement of the wall. The landlord's agent described the anticipated work on the rental unit to involve "gutting" the unit and stated that the carpets, appliances and cupboards would be removed. As there appears to be no intention to replace carpets, appliances and cupboards after they are removed, it would seem that the purpose of removing these items is to effect the change from a residence to an office. I am not satisfied that the changes proposed by the landlord cannot be accomplished while the tenant remains in the unit and further question whether the landlord can state with any certainty that permits are not required if consultation with contractors has not taken place, and it seems that it has not. However, it is clear that if the landlord proceeds with the conversion of the suite to an office, the tenant will not be able to continue living in the unit with the same amenities he currently enjoys. Because the purpose of the renovations is to change the character of the suite rendering it unsuitable for use as a residence, I find that the renovations are secondary to and dependent upon the suite being converted for use by a caretaker.

I find that the landlord has established that no permits or approvals are required to use the rental unit as an office for a caretaker. While the landlord's agent speculated that the rental unit may at some point in the future be used as a residence, the only issue I need address is the current intention to use the unit as an office.

The tenant argued that the landlord did not intend to install a caretaker into the rental unit, but wished to renovate the unit and re-rent it at a higher rate. The tenant alleged

that the landlord had an ulterior and dishonest motive in issuing the notice to end tenancy, calling into question the landlord's good faith. Because the tenant raised the issue of good faith, I am required to consider the alleged existence of a dishonest motive pursuant to Taylor J.'s decision in *Gallupe v. Birch* [1998] B.C.J. No. 1023.

The British Columbia Court of Appeal addressed the issue of good faith in this context in *Semeniuk v. White Oak Stables* (1991) 56 BCLR (2d) 371 (C.A.). In that decision, the Court held at p. 276 "that the landlord must truly intend to do what it says, and that it must not be guilty of dishonesty, deception or pretence."

Residential Tenancy Policy Guideline #2 discusses the good faith requirement and articulates a two part test:

First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

While it may be true that the landlord's agent has told the tenant that he is paying too little in rent, I am unable to find that the landlord's motive in ending the tenancy is to renovate in order to attract higher rent for this rental unit. The rent paid by the tenant does seem to be unusually low and the landlord had the option of paying a \$200.00 filing fee to apply for an order permitting him to issue a rent increase above the amount prescribed by the Residential Tenancy Regulations. The landlord and his agent have both acknowledged that the tenant has been an excellent tenant, the agent going so far as to say the tenant is the best tenant in the building. While the landlord could have achieved a higher rent through an application to the Residential Tenancy Branch, he chose to pursue a more expensive route which will require him to pay more than double that amount in compensation to the tenant and to lose an outstanding tenant in the process. I find a good deal of common sense in the landlord's position that the other units in the building will sell more readily and for a higher price if there is a resident caretaker. I do not find the question of whether the suite is illegal to be particularly relevant to the issue before me as the landlord has rented the allegedly illegal suite to

the tenant for years and I can see no reason why he would not continue to use it as a residence for a caretaker. If the suite is not illegal, and I make no finding on whether it is or is not, it does not change the fact that the landlord has made a business decision which he hopes will increase the value of the remaining units. I further note that there is nothing dishonest or unlawful about a landlord wishing to increase the value of its property and maximize returns by installing a caretaker who would use the rental unit as either a residence or an office. I find that the landlord has been honest about his intention to install a caretaker in the suite and his reasons for doing so. The tenant's recorded conversations with the property manager and the landlord's secretary do not disclose an ulterior or improper motive related to the notice before me, but rather indicate that the landlord had not fully communicated his intentions to his agents. I find that the landlord has met the good faith requirement.

Conclusion

I find that the landlord has established grounds to end the tenancy on the basis that he intends to use the rental unit for a caretaker. I therefore decline to set aside the notice and dismiss the tenant's application.

Dated: November 12, 2008.