



Dispute Resolution Services

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

Dispute Codes:

CNL, MNDC, O, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property with reason as: 49(6) (b) *The landlord has all 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.*
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (\$2500)
- Recover the filing fee from the landlord for this application(\$50)

During the hearing the landlord confirmed their need for the tenant to vacate the rental unit according to the Two Month Notice and verbally requested an Order of Possession, effective May 31, 2009, as is permitted by Section 55 (1) of the Residential Tenancy Act (the Act)

Both parties fully participated in the hearing and provided testimony under solemn affirmation. On this basis I have reached a decision.

Issue(s) to be Decided

Is the Two Month Notice to End Tenancy for Landlord's Use of Property valid?

Is the tenant entitled to the monetary amounts claimed?

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Residential Tenancy Act (the Act)? And, if so established, did the tenant take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the claimant, and as already stated,

there is an obligation upon the claimant to have acted reasonably to mitigate or minimize the loss.

Background and Evidence

The tenancy began approximately five (5) years ago. Rent is \$725 payable on the first of each month.

It is undisputed that by February 13, 2009 the tenant was served a Two Month Notice to End Tenancy for Landlord's Use: *The landlord has all 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*, with an effective date of April 30, 2009 (the Notice).

The tenant's claim is that the Notice and the reason for the Notice are in bad faith and the landlord's work does not require the rental unit to be vacant during remediation work on the rental unit. The tenant provided submissions and testified, as follows:

- he believes the motive for issuing the Notice is purely to renovate the rental unit and raise the rent from the current "affordable" amount.
- the tenant questions if the stated work is even necessary, and disputes the extent of the work being proposed, and whether the work requires the rental unit be vacant.
- the tenant thinks the landlord is being motivated by questionable advice from contractors – thus the extent of the remedial work..
- he blames poor communication between him and the landlord has resulted in an exaggerated work plan for the rental unit, and loss of income to his business as he has not been given sufficient information and assurance ("predictability") around the Notice to end Tenancy and the start of the remediation work..
- tenant claims the length of time stated for the work is "an exaggeration", that it could have been done in the past, in steps, and could be accommodated around his (tenant's) work schedule so as to minimize the impact to his consulting / writing business, and his stress.
- tenant questions that the rental unit has to be vacant for the work to be performed, saying the landlord has tried to work around him before.

- the work schedule is bad timing for the tenant, and he would be forced to move his consulting / writing business: during tax season, during a recession, and during an inflated rental market.

The landlord provided submissions and testified in response to the tenant's claims as follows:

- They have owned the rental unit, a cottage for some time. Over the years the attention to renovations and remediation of the cottage has increased.
- More recently they identified major water damage to the cottage due to a design flaw of the cottage. Initially it seemed it only necessitated work on the bathroom, but soon they came to understand the extent of the damage to the building was considerably more and that it requires extensive structural work.
- On consultation the landlord determined that in fact what was required and what they desired was comprehensive repairs and renovation.
- "Tearing off the whole back of the house, and extending the foundation", and the building. Tearing up and replacing the roof, "the work will leave the house open to the elements". Reframing the outside wall, and incorporating proper overhangs. Redoing all aspects of drainage, above and below ground. Plumbing work, electrical upgrading, sewer considerations a new sub-floor, drywall work, and painting.
- The work will involve multiple contractors, noise, dust, interruptions of all utilities and services and subjected to numerous inspections along all facets of the work.
- "It is impossible to conceive of doing this project with a tenant on the property", given the inconvenience to everyone involved and risks to anyone living in the rental unit during the course of the work.
- The work is estimated to take six (6) weeks if all goes according to planning in all phases of the work.
- The landlord's work is currently behind schedule as they have been awaiting for this process to unfold
- The landlord provided a permit as evidence of the impending work.
- The landlord fully intends to do as stated in the Notice, and stated they did not issue the Notice in bad faith or for reasons other than to repair and remodel the building as required.

- The landlord disputes that they are in anyway responsible to compensate the tenant for any loss of income as a result of the Notice to end Tenancy. The landlord does not see a link between the tenant's monetary claim and the reasons in the Notice, having given the tenant the required time, in law.
- The landlord argues that the tenant's work is primarily done on the phone and from his computer, and they are not responsible for the tenant's self-imposed problems to his business

Analysis

I have carefully gone over all the submissions available to me in this application of both parties, and I have reflected on the generous body of testimony of both parties.

As to the Two Month Notice to End Tenancy for Landlord's Use, the tenant brought into question the landlord's motives and reasoning for wanting him to vacate the rental unit. I prefer the landlord's explanations in these regards. When the 'good faith' intent of the landlord is brought into question the burden shifts to the landlord to establish that they truly intend to do what they indicate on the Notice to End, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord's *primary* motive. The landlord re-iterated the rental unit is destined for extensive remediation and the landlord is anxious to proceed on this process. If an ulterior motive exists; I do not believe that an ulterior motive is the landlord's *primary* motive for ending this tenancy. I believe the *primary* motive is the very reason stated in the Notice to End Tenancy for Landlord's Use.

I accept the landlord's evidence in finding the landlord has all necessary permits and approvals required to repair and renovate the rental unit in a manner *that requires the rental unit to be vacant*. I find that the landlord properly served the tenant with the Notice to End Tenancy and that they will provide the one month's rent equivalent to which the tenant is entitled as compensation.

Therefore, I find the landlord Notice Dated February 13, 2009 is upheld and the landlord is entitled, as requested, to an Order of Possession **effective May 31, 2009**. The tenant must be served with this order, and if necessary, this order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As to the tenant's monetary claim for loss of income to his business, the tenant claims a myriad of reasons the landlord is responsible for the disruption in the tenant's business income. Section 7 of the Act reads as follows:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The burden of proving loss and damage rests on the claimant (tenant) and, at the same time, there is an obligation upon the claimant to have acted reasonably to minimize the loss. Contrary to the tenant's testimony and submissions, I do not see, even on a balance of probabilities, how the tenant suffered a pecuniary loss *due to the landlord's neglect or failure to comply with the Act or Regulations*. In addition, the tenant has not advanced what he has done to reasonably minimize any of the losses he claims. Therefore, I dismiss this portion of the tenant's claim for loss in the amount of \$2500 in its entirety.

As the tenant was not successful in their application, they are not entitled to recovery of the filing fee.

Conclusion

The tenant's application is hereby dismissed and the landlord's Notice is upheld.

The tenancy will end as ordered.

The landlord will receive an Order of Possession effective May 31, 2009.

Dated April 28, 2009