



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, RP, O, FF

Introduction

This hearing dealt with the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Issues(s) to be Decided

The issues to be decided include whether the landlord's notice to end the tenancy for personal use is compliant with Section 49 of the *Residential Tenancy Act (Act)*. As well, if the notice is compliant with the *Act*, is the landlord entitled to an Order of Possession. Finally, it must be determined if the tenants are entitled to financial compensation for the filing fee for this application.

Background and Evidence

The tenancy began in June 2006 as a 1 year fixed term tenancy that converted to a month to month tenancy in June 2007 for rent of \$800.00 per month due on the 1st of the month. A security deposit was paid in June 2006 in the amount of \$400.00.

At the outset of the hearing it was established that there has been a dispute over the monthly rental amount. In testimony provided by the landlord and the landlord's agent there had been a change in property managers and documents, including the tenancy agreement, from the previous agent were not transferred to the new agent.

The tenant testified that the previous agent had agreed to a rent reduction of \$100.00 resulting from discussions with that agent regarding the heating of the house in winter. Neither the landlord nor his current agents have any information towards this agreement. All parties agreed that this was an outstanding issue.

The tenant's have provided into documentary evidence the following:

- A one-page document entitled Rules and Regulations listing 15 items signed by the tenant;
- A one-page document listing several clauses that is a portion of a previous tenancy agreement, signed by the tenants and the previous landlord's agent, dated June 7, 2006;
- Correspondence between the tenants and the landlord's new agent relating to this dispute;

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- A copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 14, 2009 with an effective vacancy date of November 14, 2009; and
- A summary of events and disputes between the landlord's agent and the tenants over the last couple of months.

The landlord's agent has submitted the following documentary evidence:

- A letter from the female landlord to the agent instructing her to begin the process required to provide notice to the tenants to end the tenancy and to outline the repairs and renovations required;
- An email from the local Building Inspector indicating that there is no requirement for building permits for any form of renovation to an existing structure where there is no change to the building footprint or height. The Inspector does suggest, however, that if there is any electrical or gas changes the BC Safety Authority may require permits; and
- A corrected 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2009,

The landlord and his agents provided testimony that the planned renovations included a complete renovation of the both the kitchen and adjacent flooring in the dining room; and the main bathroom of the house. This renovation includes the removal of cabinetry and includes using the existing footprint of the rooms. There was no indication that the fridge and stove would be disconnected or removed during the renovations.

The landlord, who lives out of province, plans to complete the renovations himself on vacations at Christmas and spring break and potentially the summer of 2010. To accommodate this schedule the landlord has arranged a contractor to remove the existing kitchen and bathroom for the beginning of December 2009.

The landlord is also concerned about the potential for unanticipated work that may be required as a result of the age and condition of the house once the cabinetry and fixtures are removed in December, 2009. The landlord also expressed a desire to not have to work around the tenants or their belongings.

The tenants provided testimony indicating that they have made arrangements with neighbours and family to "live around" the renovations by using outside facilities as required, staying over at friends and family's homes for up to 2 months, and generally living in the house without the use of the kitchen and upstairs bathroom. The tenants have indicated they are willing to use the facilities (unfinished bathroom with toilet and shower) in the basement until the upstairs bathroom is complete.

Analysis

Section 49 (6) (b) of the *Act* states:

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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The *Act* does not restrict the landlord's right to make any renovations but does limit the landlord's ability to end a tenancy for the purposes of making those renovations. The landlord does, however, have the burden to prove that the notice is compliant with all aspects of the subsection.

I accept the landlord's documentary evidence that provides that there is no need for any permits or approvals for the work being contemplated in the rental unit's jurisdiction.

According to the Residential Tenancy Policy Guidelines the good faith requirement imposes a two part test. The landlord must first intend to use the premises for the purposes stated on the notice. I am convinced that the landlord fully intends to make the renovations as proposed. Secondly, the landlord must have no ulterior motive as the primary motive for seeking the end to the tenancy. I am satisfied that there is no ulterior motive.

The final point to review is the reasonableness of the proposed need to vacate the rental unit for the purposes of the renovations. None of the testimony provided supported the position that the proposed renovations in themselves required the tenants vacate the premises for completion of the replacement of cabinetry, fixtures and flooring. However, there may be periods of time that require that the tenant restrict their access to portions of the rental unit.

The landlord anticipates that the renovations can be completed during his vacation periods at Christmas and spring break and if need be in the summer of 2010, in total making the construction period potentially anywhere from two to six weeks, barring any problems uncovered during demolition. The tenants have made it clear that they have no objections to and in fact have made arrangements to be away if required throughout the process, at no cost to the landlord, for the full proposed timeline from demolition in December 2009 to potential completion in summer 2010.

Conclusion

Based on the findings above I grant the tenant's application to set aside the notice to end tenancy for landlord's use.



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As the tenants were successful in their application I also find that the tenant is entitled to the recovery of their filing fee from the landlord. As per Section 72 (2) (a), the tenant may deduct \$50.00 from rent due to the landlord to satisfy this finding.

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: October 13, 2009.

Dispute Resolution Officer