

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the notice to end tenancy for the landlord's use of the property and a Monetary Order to recover the filing fee.

The tenant served the landlords by registered mail on February 08, 2010 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to cancel the notice to end tenancy?

Background and Evidence

This month to month tenancy started on December 15, 2002. The new landlords purchased the property and took ownership on January 22, 2010. The tenants monthly rent is \$824.60 which was increased from \$800.00 in January, 2010. The tenant paid a security deposit of \$400.00 on December 15, 2002.

The tenant testifies that she was served with a Two Month Notice to End Tenancy on January 29, 2010. This reason given on the Notice was that 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 which requires the rental unit to be vacant.

The tenant disputes the landlord's reasons given on this Notice. The tenant states that the landlords have not applied for any permits or approvals and has included an e-mail from the city permit department which confirms that no permits have been applied for at the rental address. The tenant also questions the landlord's intent as she feels the landlords are attempting to evict her because they want to substantially increase the rent. The tenant states that the landlords spoke to her and told her they had bought the duplex as an investment and they would like to carry out some upgrades to the flooring and decoration. The tenant states that she does not believe that it would be necessary to evict her as the last landlord also carried out renovation work at the duplex two years ago and she was able to continue living in the unit while renovations took place.

The tenant explains that the duplex has two floors which would allow her and her children to live in a separate area while any renovations were going on. The tenant states that the last round of renovations was extensive and included: new flooring; new windows fitted; decorating throughout the unit; new baseboards installed; new central air system installed; bathrooms tiled; driveway asphalted; new roof on the duplex; car port extended, underground sprinklers installed; hot water tank installed; bedroom ceiling sprayed; new carpet laid; bay window installed; new siding installed; and stucco painted. The tenant states that she and her children worked with the previous landlord and contractors to ensure there was no undue stress for all Parties concerned while these renovations took place over a period from 2006 to 2009. The tenant states she is willing to continue to live in the property for the month the landlords expect this work to take and will work cooperatively with the landlords while the work does take place.

The tenants witness testifies that she was present when the landlords served the eviction notice to the tenant. She also testifies that she heard the landlord's state to the tenant that they were evicting her because they wanted to paint the walls and put in new flooring. The witness states that the tenant told the landlord she was not opposed to these renovations and explained painting had been carried out a year ago and laminate flooring was installed within the last two years. The tenants witness states that she heard the landlords tell the tenant that it was not personal but they bought the duplex as an investment and they could easily get \$2,000.00 for each side of the place.

The landlords cross examined this witness and state that they did not see her at the tenants' residence when they delivered the Notice to End Tenancy. The female landlord later stated that she did see the witness but did not at first recall her being there and her recollection was that she was out of the room for a good part of her conversations with the tenant. The female landlord also states that she did not mention getting \$2,000.00 for the unit during this conversation and puts it to the tenants witness that this conversation was made later with the tenant and then relayed to her.

The tenants witness states that she remained in the unit while the tenant and landlord had a conversation and she could hear the conversations from her position first in the kitchen then in the hallway.

The landlords testify that they intend to make substantial renovations to the rental unit which will require vacant possession. They also state that it is their intention some time later to sell their home and move into the rental unit. The landlords state that the overall condition of the unit is poor with much of the previous work being substandard. The landlords state that they asked the previous owners to end the tenancy so they could carry out renovations but they declined and this clause was removed from the contract of sale.

The landlord's state that the walls are in poor condition, the windows require replacement, the tile grout is discoloured, the flooring has been laid in a shoddy manner, and the paint job is poor. The previous renovations have not added to the value of the property.

The landlords state that they tried to accommodate the tenant until the end of June as her children are at school in the area. They state that they attempted to reach an agreement where she could stay at the unit till the end of June, they would sign a new tenancy agreement, the tenant would forgo her right to the one month compensation for the notice and they would increase the rent to a cost for them to delay the renovations. The landlord states the tenant did not get back to them about their proposal and applied for Dispute Resolution instead.

The landlords state that the male landlord is a contractor and will do the renovations himself. At this time the renovations planned do not require a permit but they will apply for one if they find it necessary after the work starts. The male landlord states that he has concerns about a leak in

the ceiling and some exposed wires. He suggests these may be indicators to other problems that they cannot see at this time.

The landlord has provided sworn witness statements from a contractor who bears witness to the condition of the unit. He states that the unit is run down and generally in poor condition and in need of substantial renovation. The bathrooms, dry wall and flooring are in particular bad shape and there is water damage to one of the ceiling tiles and some exposed wiring.

The landlord's have provided another sworn witness statement from a local realtor who acted for the landlords in the purchase of this property. This realtor states that the landlords were looking to purchase a property they could renovate to improve its market value and rental prospects. The realtor also states in his sworn affidavit that he followed up with a prospective client whom he believes to be the tenant who was searching for a property to purchase and told the realtor that she has the cheapest rent on the planet and would do whatever she could to keep it.

The male landlords sworn affidavit states that he intends to conduct the following renovations: replace the laminate flooring, repair drywall upstairs and wooden panelling in basement, replace ceiling tiles and inspect for plumbing issues; replace bathroom fixtures and mirrors; paint throughout; refurbish or replace kitchen cabinets; replace interior doors; repair or replace trim throughout; replace damaged carpet in basement; replace damaged linoleum in stairwell. The landlords also intend to have a certified electrician conduct an inspection of the unit to ensure compliance with local building codes. The landlords expect the work to take at least one month.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. When a tenant brings into question the landlords good faith in issuing the Two Month Notice to End Tenancy and challenges their intention to carry out the renovations of the property against their desire to charge more rent for the property; the burden of proof falls on the landlords to prove that their intention is to renovate the rental property and the extent of these renovations would require the tenant to move out. In this instance I find the landlords argument that they require vacant possession to carry out the renovations to have merit. The renovations described will require a substantial amount of mess and upheaval for the tenant and her children and the landlords would prefer to have vacant possession while the work is carried

out. The landlords have also indicated that they suspect more work will be required due to the age of the property and the surface issues already identified such as exposed wiring and evidence of a leak. I therefore find that the landlords have established that they do intend to do what is indicated on the Notice to End Tenancy and are not acting dishonestly or with an ulterior motive to end the tenancy as their primary motive.

While I acknowledge the tenants desire to stay at the property while this work is completed I find it would be unfair and unreasonable to the landlords for the tenant and her children to continue to reside at the property with all their belongings in place. Consequently it is my decision that the Two Month Notice is upheld and the tenants' application is dismissed.

As the tenant has been unsuccessful with her application I find she must bear the cost of filing her own application.

The landlords have requested an Order of Possession to take effect at the end of April, 2010. I find as this has extended the time originally given to vacate the rental unit by an extra month and feel this is a reasonable request from the landlords.

I would like to draw to both parties attention section 51 of the Act which states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant is therefore entitled to withhold her rent for the month of April, 2010.

Conclusion

The Tenant's application is dismissed without leave to reapply. The Two Month Notice to End Tenancy for landlords use of the property dated January 29, 2010 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on April 30, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 24, 2010.

Dispute Resolution Officer