



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNL, 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* (the Notice), to cancel a *1 Month Notice to End Tenancy for Cause*; and for recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to other party's submissions. The parties gave affirmed testimony.

Preliminary Matters

At the outset of the Hearing it was determined that the Landlord did not issue a *1 Month Notice to End Tenancy for Cause* and therefore this portion of the Tenant's application is dismissed.

The Landlord submitted that the Tenant had not served her within the time frame provided in the Act and the Rules of Procedure. She stated that the documents were dated July 20, 2011, but she did not receive the Notice of Hearing documents until August 2, 2011.

The Tenant responded that he had filed his Application for Dispute Resolution at a government agent's office on July 15, 2011, but did not receive notification that the Notice of Hearing documents were ready to be picked up until late in the day on July 29, 2011, which was a Friday. He stated that he picked up the documents on Monday, August 2, 2011, and served the Landlord right away.

The Landlord provided her documentary evidence on August 3, 2011. The Tenant provided documentary evidence on August 9, 2011.

I asked the Landlord if she wished to adjourn the Hearing in order for her to have more time to prepare. She declined.

The Rules of Procedure require that an applicant must provide copies of his evidence to the Residential Tenancy Branch (the "Branch") and to the respondent **as soon as possible**, but in any event at least 5 days before the date of the Hearing. The definition

of “at least” does not include the day the documents are provided, the day of the Hearing, or any weekend days or statutory holidays in between. In rare instances, evidence can be accepted up to 2 clear days before the Hearing date. The Tenant did not provide his documentary evidence until 1 clear day before the Hearing date and therefore I have not considered this documentary evidence in my Decision.

With respect to the Landlord’s evidence filed August 3, 2011, I find that the Landlord provided these documents in a very timely fashion after being served with the Notice of Hearing documents, and within the minimum allowed timeframe of 2 clear days. Therefore, her documentary evidence has been considered in my Decision.

Issue to be Decided

Should the Notice issued May 30, 2011, be cancelled?

Background and Evidence

The Tenant has lived in the rental unit for 11 years. The Landlords purchased the rental property from the prior owner approximately 3 years ago. The Tenant had an agreement with the prior owner that there would be no rent increases if the Tenant attended to certain improvements and maintenance of the rental unit. Monthly rent is \$624.00.

The Landlords have alleged the following reason on page two of the Notice for ending the tenancy:

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.

The Landlord testified that she served the Tenant with the Notice on May 30, 2011. The Tenant testified that he did not receive page 2 of the Notice. The Landlord disputed this, and stated that she gave him both pages.

The Landlord testified that the ceiling in the rental unit has to be repaired because of a leak. She stated that she wanted to put in new carpet and tile. The Landlord testified that she believed she might have to redo the subfloor because it is uneven. She stated that she will “probably” put in a new heating system, repair holes in walls, and install new kitchen cupboards. The Landlord testified that permits were not required in order to do this work, and that the City could confirm that. She stated that the City could confirm that the rental unit would have to be vacant in order for the work to be done.

The Landlord testified that the Tenant refused to allow her to replace an old door because the door of her choice was not good enough.

The Tenant stated that he replaced the carpet and put in additional padding underneath because the rental unit was very cold. He stated that the floors were not uneven. The Tenant stated that he does not believe the rental unit will have to be vacant for the repairs to be done, but that he is prepared to temporarily vacate the premises for a couple of weeks, should it become necessary, and to move his belongings to accommodate the Landlords.

Analysis

The Landlords have an obligation to repair and maintain a rental unit so that it complies with health, safety and housing standards required by law. It is not in dispute that the ceiling requires repairs. The Landlords also wish to install new flooring and kitchen cupboards.

The reason given to end the tenancy on the Notice is based upon section 49(6)(b) of the Act which provides:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

[emphasis added]

The Tenant did not dispute the Landlord's statement that permits are not required in order to effect the renovations. I must determine whether the Landlord has met the remaining criteria of section 49(6), that the repair or renovation requires the rental unit to be vacant.

This has been an issue before the Supreme Court of British Columbia in *Berry v. British Columbia*, 2007 BCSC 257. The court found that the requirement that a rental unit be vacant has two dimensions that must be satisfied in order to determine that the tenancy must end:

1. As a practical matter, does the unit need to be empty for the renovations to take place? The fact that renovations might be more easily or economically undertaken if the unit was empty is not sufficient. To warrant an end to the

- tenancy, renovations must only be possible if the unit is unfurnished and uninhabited.
2. The landlord must establish that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the tenancy.

The court also noted that if the unit needs to be vacant for only a short time, it is irrational to think that a landlord could terminate the tenancy.

The Landlord admittedly does not know the extent of required repairs and will not know until the carpets have been removed. The Tenant has offered to temporarily vacate the rental unit, should it be necessary, in order for the work to be done. Therefore, I find that the Landlord has not sufficiently demonstrated that any necessary emptiness can only be achieved by ending the tenancy. I do not accept the Landlord's position that all of the Tenant's personal belongings need to be removed from the rental unit in order for the Landlord to do the exploratory work.

Since I have found that the Landlord has not demonstrated that the rental unit needs to be vacant in order to do the exploratory work and that the only way to achieve the necessary emptiness is by ending the tenancy, the Landlord has failed to provide sufficient evidence that the rental unit is required to be vacant in order to complete the repairs. Accordingly, I grant the Tenant's application to cancel the Notice. The tenancy will remain in effect until it is ended in accordance with the provisions of the Act.

Although the Landlord expressed concern over structural damage to the rental unit, I found the Landlord's concern to be premature. Should the Landlord discover extensive damage, thus necessitating extensive repairs to the structure of the building, the Landlord is at liberty to obtain the necessary permits and issue another Notice to End Tenancy.

The Tenant has been successful in his application and is entitled to recover the filing fee from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy issued May 30, 2011, is cancelled and the tenancy remains in full force and effect.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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: August 15, 2011.

Residential Tenancy Branch