Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNION GOSPEL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on January 27, 2011. The monthly rent is $750.00 payable on the first of each month. The rental unit is an apartment located in a building complex that houses a total of 75 apartments.

On September 19, 2012, the landlord served the tenant with a notice of entry. The reason for the entry was explained in the letter and described as "*to upgrade all of the windows, doors and front door locks within the complex. We are attempting to alleviate your concerns about excessively high electrical bills and make your home more comfortable*"

On September 20, the tenant responded in writing informing the landlord that he would not allow the work to proceed. In his letter he stated "*Although we appreciate your concerned offer to replace our windows, we have no need to replace them*"

The landlord responded and informed the tenant that the upgrade work was to bring the whole complex to a higher standard of health, safety and housing. The landlord requested the tenant to permit workers to do the work on September 24, 2012.

The tenant replied in writing and reiterated that he had no need for new windows. He also stated "*Please do not proceed with installing windows in our home. In our opinion this demand is unreasonable"*

Similar requests in writing were presented to the tenant on March 20, 20132 and April 12, 2013. The tenant refused to permit the landlord access to complete the work. At the time of the hearing, the landlord stated that the upgrade work was completed in all the units in the complex, except for this dispute rental unit.

During the hearing, the tenant stated that the reasons for refusing entry to the landlord were that the windows were fine and did not need to be replaced. He also added that the upgrading should have been accomplished prior to the start of his tenancy. The tenant stated that he feared that asbestos may be present inside the drywall and that his living space would be messy after the work. The tenant also stated that the work would involve two days of displacement and that his right to quiet enjoyment would be jeopardized for the duration of the work.

The landlord replied that the work would be completed in one day and that it was carried out from the outside of the rental unit. After the work, the affected areas would be cleaned up. The landlord also stated that he had received approval from the regulatory authority with regard to the presence of asbestos. The landlord stated that he had documentation to support his testimony that asbestos was not a concern.

The landlord filed a copy of the signed tenancy agreement. Clause 30 of the agreement is titled "Entry of rental unit by the landlord". This term states that the landlord may enter the rental unit only if the landlord gives the tenant at least 24 hours written notice which states the purpose for entering which must be reasonable and the date and time of entry must be between 8a.m. and 9 p.m.

During the hearing, I asked the tenant if he wanted to agree to have the work done and if so, I would assist him in setting a mutually convenient date. The tenant was very sure that he did not want to have the work done. He quoted *Residential Tenancy Policy Guideline* #1 titled Landlord and Tenant – Responsibility for Residential premises

At the beginning of the tenancy, the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.

The tenant stated that pursuant to this policy he was not obligated to grant the landlord access to upgrade the windows.

However, the tenant also stated that he would agree to allow the landlord access if he was compensated for the inconvenience. The landlord stated that he had no intention of compensating the tenant and wanted the tenancy to end.

On April 15, 2013, the landlord served the tenant with a notice to end tenancy. The reason for the notice was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged, namely that the tenant has breached a material term of the tenancy agreement.

Section 32 of the *Residential Tenancy Act,* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

In this case the landlord was upgrading the windows from a single pane to double pane and was also upgrading the locks on the doors for increased security. Based on the testimony of both parties, I find that the landlord was making changes that were beneficial to both parties and which would provide the tenant with enhanced security and lower energy bills.

The landlord provided the tenant with 24 hour written notice pursuant to section 29 1 (b) of the *Residential Tenancy Act* which states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Based on the documentary evidence filed by both parties, I find that the landlord acted in compliance with the terms of the tenancy agreement and with section 29 of the *Residential Tenancy Act,* but was not granted access to the rental unit.

The tenant was adamant in his refusal to allow the work to be carried out unless he was compensated for the loss of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

I find that the landlord assured the tenant that the work would be completed from the outside, within one day and that clean up of the affected areas would be taken care of. Therefore any inconvenience to the tenant would be temporary. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Based on the above, I find that the tenant breached a term of the tenancy agreement and did not comply despite having been given three opportunities to do so. I also find that any inconvenience caused to the tenant would be temporary and that the landlord would be carrying out the necessary cleaning.

I further find that the landlord's request for access to upgrade the windows and locks was reasonable, in compliance with section 29 and in keeping with the landlord's lawful right to protect his property. Accordingly, I uphold the notice to end tenancy and dismiss the tenant's application to set it aside.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective the dated of the notice to end tenancy which is May 31, 2013.

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: May 22, 2013

Residential Tenancy Branch