



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COSTA-LESSA MOTEL
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNL, OLC, RR

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated January 30, 2014 and purporting to be effective March 31, 2014. The tenant is also seeking an Order to force the landlord to comply with the Act and seeks a further rent abatement of \$140.00 per month.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use be cancelled?

Should the landlord be ordered to comply with the Act and agreement?

Preliminary Matters:

Sever part of Tenant's Application

In regard to the tenant's monetary claim for a further rent abatement, I find that the Residential Tenancy Rules of Procedure, Rule 2.3 states, if the arbitrator determines that it is appropriate to do so in the course of the dispute resolution proceeding, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the tenant's monetary claim for a further rent abatement is a distinct matter separate from the other portion of the tenant's application seeking to cancel the 2-Month Notice to end Tenancy for Landlord's Use, pursuant to section 49 and 55 of the Act.

Accordingly, I find that the monetary portion of this application should be severed and dealt with separately through another application. Therefore the tenant's request for a further rent abatement is dismissed with leave to reapply. However, a determination will be made on the remainder of the tenant's application in regard to the Notice to End the tenancy.

Prior Decisions Potentially Affecting the Dispute

1. A previous hearing was held between this landlord and this tenant on the tenant's application seeking an Order to force the landlord to make emergency repairs, provide service or facilities required by law; and also seeking a rent abatement for repairs, services or facilities agreed upon but not provided

The tenant was successful and in a decision dated October 30, 2013 the following orders were issued against the landlord:

- Hire a professional hazmat team and comply with their directions with respect to mould removal and other orders.
- Hire a professional contractor to inspect the rental unit and, as recommended by the contractor, to repair or replace damaged or destroyed plumbing; roofing materials; insulation; drywall; ceiling, flooring and windows in coordination with the hazmat team.
- Provide the Tenant with a copy of the professional(s)' report including recommended repairs.

All of the above steps were supposed to be completed no later than February 1, 2014. The arbitrator ordered that the tenant's rent was to be reduced by 20% pending the completion of the repairs and set the rental rate at \$640.00 pending the landlord's compliance.

2. Another hearing was held on the tenant's application seeking an order to cancel a One Month Notice to End Tenancy for Cause issued by the landlord attempting to terminate the tenancy, "*to comply with a government order*" and the landlord apparently took the position that the "*list of repairs ordered of him required vacant possession of the rental unit.*" The arbitrator found that:

"I find the landlord provided no evidence that the rental unit must be vacated to comply with the Decision of October 30, 2013, requiring the landlord to make repairs. Instead the landlord has attempted to use an

order requiring him to make repairs against the tenant in his attempt to evict her.

Had the landlord obtained professionals' reports proving that the rental unit must be vacant in order to bring the rental unit to a livable standard and that he had the necessary permits and approvals for such repairs, the notice issued by the landlord would be a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

Due to the above reasons, I find that the landlord has provided insufficient evidence to prove the cause listed on the Notice."

The arbitrator granted the tenant's request to cancel the One Month Notice to End Tenancy for Cause and cautioned the landlord:

"As the landlord has confirmed that he has not complied with the orders listed in the Decision of October 30, 2013, I bring to the landlord's attention the administrative penalties provision under section 94.1(b) of the Act, which allows a monetary penalty for anyone failing to comply with a decision or order of the director of the Residential Tenancy Branch."

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord's Use which indicated two different reasons provided by the landlord for terminating this the tenancy. The first box that the landlord had checked off states that:

"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 second reason given for terminating the tenancy on the Notice is:

"The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use."

No evidence was submitted to support the landlord's claim that the rental unit will be converted to non-residential use, other than verbal claims of the landlord.

In regard to the first reason for ending the tenancy, the landlord testified that, in order to comply with the original order of October 30, 2013, to repair or replace damaged or destroyed plumbing; roofing materials; insulation; drywall; ceiling, flooring and windows in coordination with a hazmat team, the unit must be vacant.

The landlord acknowledged that none of the repairs ordered in the October 30, 2013 decision were yet initiated. According to the landlord, they can't be started until the rental unit is vacant. The landlord testified that the work to be done does not require any municipal or other permits. The landlord explained that they did not make any

applications for permits because municipal authorization and inspections are not necessary in their municipality for the nature of the planned renovations.

After the landlord served the Two Month Notice to End Tenancy for Landlord's Use by posting it on the tenant's door on January 31, 2013, the landlord apparently received a "*Condition Verification Report*" report from a building inspector dated February 26, 2014. A copy of this report was submitted into evidence and lists deficiencies that require repairs. In the summary portion of the report the inspector writes,

"The expense of working around furniture and personal items is not practical for a renovation of this magnitude. Recommend that the work be conducted as soon as possible due to health and safety risks."

The landlord stated that the renovations will take 6 to 8 weeks and it is ludicrous to claim that the unit can be occupied during this extensive renovation process. The landlord's position is that the latest Notice to End Tenancy is supported by the facts and should not be cancelled.

The landlord stated that he has made attempts to assist the tenants in finding alternate housing where they could relocate, but the tenants refuse to cooperate. The landlord submitted advertisements showing examples of other rental properties that the tenant could pursue. The landlord also stated that if the Two Month Notice to End Tenancy for Landlord's Use is cancelled then he intends to sell the rental unit, which will end the tenancy in any case.

The tenant testified that the landlord has repeatedly refused to maintain or repair the rental unit, even when specifically ordered to do so under the Act. Instead, after the tenant's successful application and order against the landlord for needed repairs heard in October 2013, the landlord proceeded to make two subsequent attempts to terminate their tenancy.

The tenant's position is that the One Month Notice to End Tenancy for Cause heard on January 24, 2013 and the latest Two Month Notice to End Tenancy for Landlord's Use, were both issued by the landlord in reprisal against the tenant for enforcing their statutory right to live in a properly maintained rental unit under the Act. The tenant raised the issue of bad faith and pointed out that the landlord is clearly seeking to evict the tenant to avoid completing necessary repairs required under the Act, as ordered by the arbitrator on October 30, 2013.

The tenant testified that the landlord has not commenced any of the repairs, which were considered as significant and urgent by the arbitrator presiding over the hearing in October 2013. The tenant pointed out that the landlord was also cautioned by the

arbitrator overseeing the January 24, 2014 hearing that there is an “*administrative penalties provision under section 94.1(b) of the Act, which allows a monetary penalty for anyone failing to comply with a decision or order of the director of the Residential Tenancy Branch.*”, and the landlord has persisted in ignoring the repair order s despite this caution.

The tenant pointed out that the landlord posted the 2 Month Notice on January 31, 2014 but is relying on a report that was not completed by the company until a month after the Notice was already issued. The tenant pointed out that the inspector had merely observed that,

“*The expense of working around furniture and personal items is not practical.* (Emphasis added)”.

The tenant testified that this problem could be addressed through the provision of temporary accommodation.

The tenant stated that the landlord has not provided sufficient evidentiary support to prove the validity of the Two Month Notice to End Tenancy for Landlord's Use and to prove that the Notice was issued in good faith. The tenant believes that the Two Month Notice to End Tenancy for Landlord's Use has absolutely no merit and should be cancelled.

Analysis

I have been designated under Section 61 of the *Residential Tenancy Act* to conduct a hearing regarding this application to decide whether the 2-Month Notice should be aside and the tenancy continue, or whether the Notice should be upheld and the tenancy is therefore to end on the effective date of the Notice. The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was warranted and supported under the Act.

With respect to the reason given by the landlord for terminating the tenancy on the Notice, stating that they have all the necessary permits to convert the rental unit to a non-residential use I find that, other than the disputed verbal testimony of the landlord, no evidence was provided to support this allegation. For this reason, I find the landlord has failed to sufficiently meet the burden of proof to establish their good faith intention to convert the unit to nonresidential use.

I find that the first reason given in the Notice was under section 49(6)(b) of the *Act*. This is based on the ground that the landlord has all necessary permits and approvals required by law, and intends in good faith repair the rental unit in a manner that requires the rental unit to be vacant.

I find that I concur with the tenant's position as outlined below::

1. Based on the associated conduct regarding this matter in the past, the landlord has demonstrated that they are not proceeding in good faith, which is a requirement under this section of the Act; and;
2. The unit need not be vacant and tenancy terminated for the landlord to initiate some of the renovation work: and;
3. The tenant could be relocated temporarily while some of the more intrusive work is being done; and;
4. The landlord does not have any permits to complete the renovations, nor has the landlord proven that there is no requirement for permits.

I find that there had been a previous unsuccessful attempt to terminate the tenancy that was found to be without merit. I find that the landlord has neglected to comply with previous orders for repairs, despite the fact that they were urgently needed to be done without delay for health and safety reasons, as confirmed later in the "Condition Verification Report" arranged by the landlord.

I find that the landlord neglected to submit supportive evidence to establish the planned sequence of the specific repair projects and the status of the landlord's genuine intent and initial preparations to commence the work.

I find that some of the renovation work, such as the roof repairs could have, and should have, been completed long ago and that this particular job could be done without having to vacate the unit. I find that acting in compliance with the Act in this regard would have spared both the landlord and the tenants several months of additional infrastructure damage that has likely occurred since the issue was known.

I also note that nothing was submitted to verify what the municipality's position was on the issue of permits and approvals to confirm that the matter was even discussed with local building code enforcement officers or inspectors.

For the reasons above, I accept that the landlord has not established that they have acted in good faith with respect to their effort to terminate this tenancy

I find that the landlord's testimony and evidence did not suffice to defend against the tenant's allegations. I find that, the burden of proof is squarely on the landlord to satisfy the criteria under the Act, and the landlord has failed to sufficiently meet this burden.

Based on the testimony and evidence presented during these proceedings, I find that the criteria under section 49(6) has not been met in the face of the challenge put forth by the respondent.

Accordingly, I find that the tenant's application to have the 2-Month notice cancelled must be granted. I hereby order that the Two-Month Notice to End Tenancy for Landlord's Use issued on January 31, 2014, is cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the landlord's 2-Month Notice to End Tenancy for Landlord's Use is ordered cancelled and of no force nor effect.

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 27, 2014

Residential Tenancy Branch

