Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 month Notice to end tenancy for landlord's use of the property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant submitted the application for dispute resolution on July 14, 2014, to dispute a 2 month Notice to end tenancy for landlord's use of the property issued on June 30, 2014, by the previous property owner. The Notice indicated the tenant must vacate the rental unit to allow repairs.

On July 31, 2014 sale of the property was completed and a 2nd 2 month Notice to end tenancy for landlord's use of the property, to allow repairs, was issued by the new property owner.

There was no dispute that the tenant had corrected the application, removing the previous property owner and adding the current property owner as the respondent.

The parties agreed that the 2 Month Notice to end tenancy issued on June 30, 2014 was flawed and of no force or effect. It was agreed that the Notice in dispute was that issued on July 31, 2014.

Both parties submitted their evidence to the Residential Tenancy Branch and each other outside of the time-frame required by the Rules of Procedure. The parties agreed that they were prepared to proceed and to reference the evidence.

Issue(s) to be Decided

Should the 2 month Notice to tend tenancy for landlord's use of the property issued on July 31, 2014 be cancelled?

Background and Evidence

The parties agreed that the tenancy commenced on October 16, 2012. Rent is $1,200.00 due on the 1st day of each month. Utilities are included with rent. A security deposit was not paid. The tenant does not have a copy of the tenancy agreement; the landlord agreed to provide a copy to the tenant.

On June 30, 2014 the previous owner issued a Notice ending tenancy based on a *Permit to Alter, Repair or Remove a Building or Structure* issued by the City of Prince Rupert on that date. The sale of the residential property was meant to close on this date; but was delayed until July 31, 2014.

On July 31, 20134 the purchaser issued a Notice ending the tenancy for landlord's use so that repairs, requiring vacant possession, could be completed.

The Permit issued by the City of Prince Rupert indicated that the landlord planned to make the following repairs to the residential property:

- Re-roof with plywood;
- Replace 3 windows;
- Replace basement door; and
- Replace hardwood floors.

Email evidence indicated that on September 10, 2014 the contractor who had obtained the June 30, 2014 Permit, had the Permit amended to include further repair:

- Replace retaining wall on the east side of the front yard.

The landlord submits that vacant possession is required so that all work may be completed at once. Removal of the basement laminate may reveal moisture problems that require further repair.

The landlord said that the property was purchased sight-unseen. Written submissions indicate that the landlord met with the tenant on June 7, 2014 at which time they provided the tenant with a rental application as they wanted to sign a new tenancy agreement.

Assessment of the property was then completed by a construction firm; resulting in the decision to obtain the initial Permit. At this time the landlord became concerned about the state of the retaining wall.

On July 24, 2014 the tenant sent the landlord an email indicating she wished to continue with her current tenancy terms. The landlord had offered a $100.00 per month rent reduction, but the tenant would have to pay the utility costs. As the tenant declined to accept a new tenancy the sale completion date was moved to July 31, 2014. The seller and purchaser then agreed that the seller would issue the initial 2 month Notice to end tenancy; which the tenant had disputed as part of this application. The July 31, 2014 Notice is now in dispute. The landlord issued the 2nd Notice to end tenancy, so that they could avoid any uncertainty and have indicated they do not intend to reply on the June 30, 2014 Notice.

The landlord submits that they are concerned for the safety of the neighbour and the tenant and her daughter, as the retaining wall at the front of the property is deficient; leading the landlord to believe it is unsafe for the tenant to reside in the home. The contractor has determined that the scope of the retaining wall repair requires the tenant to vacate. The landlord stated that the whole front yard will need to be excavated and that the front door will be sealed off and unusable.

The landlord said that the City of Prince Rupert does not permit occupancy of a home that has only 1 point of egress. The tenant has use of the front door and a door exiting from the basement of the home.

Email evidence dated September 8, 2014 indicated that the municipality requires an engineering drawing for the wall project. The wall will be replaced by a 6 foot wall.

An April 16, 2014 home inspection report completed for the landlord was supplied as evidence. The report indicates that the foundation wall in the front yard is cracked and may be subject to further movement due to the large amount of precipitation in the area.

The tenant said she would not have any difficulty living in the home while the repairs are completed. If the hardwood is replaced there is ample room in the basement for temporary storage of belongings. The tenant does not have any concern regarding the possibility of using the basement door while the front yard project is completed. The tenant said neighbours had similar work completed recently and they remained living in their home during construction.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has failed to prove, on the balance of probabilities, that vacant possession of the unit is required to complete the planned repairs.

From the evidence before me I find it would be unreasonable and unfair to evict a tenant to allow a new roof, 3 windows, a door and flooring to be installed. It is common knowledge that home owners manage to reside in their homes during what I find to be minor repair and upgrades.

I considered the submission in relation to the work planned in the front yard of the residential property and find, on the balance of probabilities that this work has not been shown to require vacant possession of the rental unit. There was no evidence before me indicating that use of one point of egress posed a safety risk; no local bylaw was provided. Even if a bylaw does exist the landlord should be in a position to accommodate the tenant during any period of time where the front door may not be used and to minimize the time the door is not useable.

The landlord may well wish to complete all repairs in a short period of time; as a matter of economy. This would be to the benefit of both parties; as the period of disruptions in the home would be lessened. The landlord and tenant can reach a mutual agreement for dates and times of entry; or, in the absence of agreement the landlord may issue notice of entry, in accordance with section 29 of the Act.

The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257:

> *"[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use "vacant" to mean "empty". Thus, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in* ***Allman****. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.*
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> *[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply*.

The landlord may find it more practical or easy to have vacant possession of the unit; but, as set out by the Supreme Court, where it is possible to complete renovations without ending the tenancy there is no need to apply section 49(6) of the Act.

I find, on the balance of probabilities, that there is no need to evict the tenant as the landlord has not submitted evidence that the scope of the repairs are significant enough to require vacant possession. Work to be completed outside of the unit has no bearing on the tenancy. There was no evidence before me that the wall posed any safety risk. No order of local government has been issued, indicating that a risk exists. Even if there is a risk the tenant would be advised to remain away from the retaining wall until it is repaired.

Therefore, as the landlord has failed to provide evidence that vacant possession of the unit to complete repair and is anything more than a practical matter, allowing easy access, I find that the Notice ending tenancy for landlord's use of the property issued on July 31, 2014 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

As agreed by the parties, pursuant to section 63(2) of the Act, I find that the 1 month Notice ending tenancy for landlord's use of the property issued on June 30, 2014 is of no force or effect.

Conclusion

The Notices to end tenancy are of no force or effect.

This decision is final and binding and 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: September 19, 2014

Residential Tenancy Branch