Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 5470 Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Tenant stated that he placed the Application for Dispute Resolution, the Notice of Hearing, and documents he wishes to rely upon as evidence in the mail box of the service address provided for the Landlord. He cannot recall the date of service. As the Landlord acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On November 10, 2014 the Landlord submitted a binder to the Residential Tenancy Branch, which contains numerous documents and photographs, which the Landlord wishes to rely upon as evidence. Legal Counsel for the Landlord stated that this evidence package was personally served to the Tenant by an agent for the Landlord on November 10, 2014. The Tenant acknowledged receipt of the evidence package and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

I note that only the evidence relevant to my decision has been referenced in this decision, although all evidence submitted has been considered.

Preliminary Matter

On November 05, 2014 the Landlord submitted a written request to have these proceedings recorded, in the event the recording is required for a judicial review. I determined that the request was reasonable, as it does not disadvantage either party,

and I granted the request, pursuant to section 9.2 of the Residential Tenancy Branch Rules of Procedure.

In my written response to this request, dated November 14, 2014, I informed the Landlord that:

- The Landlord was responsible for making all necessary arrangements to have a court reporter attend the teleconference hearing, with all the necessary equipment, for the purposes of making an official recording of the dispute resolution proceeding
- The Landlord must provide the Applicant and the Residential Tenancy Branch with an official transcript of the proceedings
- A decision would not be rendered until such time as the Applicant and the Residential Tenancy Branch receive a copy of the transcript, as I determined that all parties should have access to that information before a decision is rendered.
- My decision may be delayed as a result of the time it takes to provide the Tenant and the Residential Tenancy Branch with an official transcript
- The Landlord would be responsible for all costs associated with the court recorder attending the hearing and the cost of providing copies of the transcript.

A court reporter was present at the start of these proceedings and was prepared to record the proceedings. The Landlord indicated it understood and accepted my directions in regards to the official recording.

The proceedings were recorded by a court reporter. At the conclusion of the hearing the court reporter advised me that she missed the first portion of these proceedings as she did not understand when the hearing officially started. This was my error, as I erroneously presumed that she was recording the hearing from the beginning of the teleconference.

At the conclusion of the hearing the Landlord was directed to provide the Residential Tenancy Branch with a Canada Post receipt that shows the transcript was mailed to the Tenant, via registered mail. The parties were advised that my decision would be rendered upon receipt of the transcript and the Canada Post receipt.

These documents were received by the Residential Tenancy Branch on November 26, 2014 and by me on December 08, 2014, and a decision was rendered on December 08, 2014.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

Background and Evidence

The Tenant stated that he moved into the rental unit on March 01, 1999. The Agent for the Landlord stated that the Landlord did not own the rental unit on March 01, 1999 and that the Landlord was provided with documents that show the Tenant moved into the rental unit on March 01, 2000.

A copy of a tenancy agreement was submitted in evidence which shows that the Tenant entered into a written tenancy agreement for the rental unit, which the Tenant stated was created after he moved into the rental unit. The tenancy agreement declares that the tenancy began on March 01, 2000 and that a security deposit was paid on February 28, 1999.

The Landlord and the Tenant agree that the current monthly rent is $1,003.97, due by the first day of each month.

The Landlord and the Tenant agree that a Two Month Notice to End Tenancy for Landlord's Use of Property was personally served to the Tenant on September 25, 2014. This Notice, which was submitted in evidence, declares that the Tenant must vacate the rental unit by November 30, 2014. The reason for ending the tenancy, as stated on the Notice, is 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 Agent for the Landlord stated that the Landlord intends to renovate this rental unit, by removing/replacing walls to change the unit from a one bedroom unit to a one bedroom unit plus den, with an open kitchen concept. She stated that the unit will be "gutted" and that the cupboards, plumbing fixtures, and flooring will be replaced. The Tenant does not dispute this testimony.

The Landlord submitted a building permit, dated June 27, 2014, which permits the Landlord to "revise the layout by renovating the kitchen and adding partition walls to create a den unit". The permit declares that the permit is issued "on the condition that the work will meet the approval of the District Building Inspector". The Landlord submitted an email, dated September 22, 2014, in which a building inspector for the City of Vancouver advised the Agent for the Landlord that the Landlord had approval to proceed with work related to this building permit.

The Landlord submitted an electrical permit, dated September 17, 2014, which permits the Landlord to replace the panel, re-wire the kitchen, and "pre-wire" the bathroom, den, and dining area. The Landlord submitted a plumbing permit, dated September 23, 2014, which permits the Landlord to install three fixtures in the rental unit.

The Landlord contends that these are the only permits required for the planned renovation. The Tenant does not dispute this submission.

The Landlord contends that this renovation is the next stage in the Landlord's attempt to upgrade the building; that the exterior of the building has already been upgraded; and that 28 suites in the residential complex have been renovated, typically after they have been vacated by the occupant. The Agent for the Landlord stated that there are currently no vacant suites that need renovating, so they wish to end this tenancy so they can continue to upgrade the residential complex.

The Tenant argued that the rental unit is in good condition and does not need to be renovated. He argued that the renovation is simply an attempt by the Landlord to improve the overall value of the building and to increase the value of the rental unit so they can charge more rent.

The Landlord and the Tenant agree that the rental unit was inspected by a "building inspector" hired by the Landlord. The Tenant stated that this inspector tested the plumbing and electrical in the unit and determined the rental unit, including the plumbing, was in good condition. The Agent for the Landlord stated that this inspector was not hired to examine the electrical or plumbing and that he told her that he would not be examining the electrical or plumbing. She stated that the inspector submitted a report that declares the rental unit is in poor condition and is in need of renovation. She stated that the report was not submitted in evidence because the Landlord did not believe it had significant evidentiary value.

The Landlord submitted a proposed work schedule for the renovations, which indicates the renovations will take 12 weeks to complete. The Agent for the Landlord stated that all of the previous renovations have taken 12 weeks or more to complete. The Landlord contends that similar renovations to unit 601 began on December 01, 2012 and were completed on February 27, 2013, and that similar renovations to unit 203 began on May 01, 2013 and were completed on July 12, 2013.

The Tenant stated that he has lived in the residential complex while all of the rental units were being renovated and he believes most were renovated within 4-6 weeks. He does not dispute the timelines provided for units 203 and 601, but he argued that many units were renovated in less time.

The Witness for the Landlord stated that he is the general contractor for this renovation; that he anticipates the renovation will take three months to complete; and that he helped create the proposed work schedule submitted in evidence. He stated that he requires the rental unit to be vacant during the renovation; that his insurance will not cover the occupant if he remains in the rental unit; and that he will not proceed with the renovations if the rental unit is not vacated during the renovation.

The Tenant had no questions for the Witness. The Tenant stated that a friend of his, who has worked in construction for many years, scoffed at the proposed time lines for the renovation.

The Landlord submitted a premises liability assessment completed by a risk management company hired by the Landlord, in which the inspector recommended the rental unit not be occupied during the proposed renovation. The Tenant provided no testimony or evidence to refute this assessment.

The Landlord submitted a hazard inspection of unit 602 completed by an environmental inspection company hired by the Landlord, in which the author of the report concluded that unit 602 was not suitable for occupancy while undergoing renovation. The Tenant provided no testimony or evidence to refute this conclusion.

The Tenant stated that he would be very flexible in accommodating these renovations, including moving out of the rental unit for as long as was necessary to complete the repairs. The Landlord argued it is not prepared to suspend this tenancy for such a lengthy period of time.

The Agent for the Landlord stated that there is currently only one vacant suite in the residential complex, which has already been renovated. She stated that this suite has been re-rented for December 01, 2014.

The Landlord submitted a copy of BC Supreme Court decision *Berry v. British Columbia (Residential Tenancy Act, Arbitrator)*. The Landlord argued that this decision does not apply to the current circumstances, as the renovations proposed for this rental unit will take significantly longer to complete than the renovations contemplated by the BC Supreme Court decision. The Tenant made no submissions regarding this decision.

The Landlord submitted a redacted copy of a Residential Tenancy Branch decision in which a Dispute Resolution Officer (now known as an Arbitrator) concluded that *Berry v. British Columbia (Residential Tenancy Act, Arbitrator)* did not apply as the renovation that individual was considering was expected to take much longer to complete than the renovation contemplated in the BC Supreme Court decision. The Tenant argued that the Residential Tenancy Branch decision was significantly different than the circumstances being considered in these proceedings, as the five owners of the building wished to occupy the unit after the renovations were complete.

Legal counsel for the Landlord requested an Order of Possession at the hearing.

Analysis

On the basis of the testimony of the Tenant, I find that the Tenant moved into the rental unit on March 01, 1999. I find this testimony reliable as it was corroborated by the tenancy agreement submitted in evidence, which shows that the Tenant paid a security deposit on February 28, 1999.

On the basis of the undisputed evidence, I find that the Tenant entered into a written tenancy agreement for the rental unit for a tenancy that began on March 01, 2000. I

find that this was the start of a new tenancy, even if the Tenant occupied the rental unit prior to that date.

Section 49(6)(b) of the *Residential Tenancy Act(Act)* authorizes a landlord to end a tenancy if the landlord has all the necessary permits required by law and the landlord intends, in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. On the basis of the undisputed evidence, I find that on September 25, 2014 the Landlord served the Tenant with proper notice to end the tenancy in accordance with section 49(6)(b) of the *Act.*

On the basis of the undisputed evidence, I find that the Landlord has all the necessary permits required to renovate the rental unit, which include a building permit, a plumbing permit, and an electrical permit.

After considering all the evidence, I find that the Landlord intends, in good faith, to renovate the rental unit. Good faith is an abstract concept that encompasses honest intent and has no malice, no ulterior motive to defraud, and does not seek an unconscionable advantage. In determining that the Landlord is acting in good faith, I was heavily influenced by the undisputed evidence that the exterior of the residential complex and 28 suites have already been upgraded/renovated. This demonstrates a pattern of behaviour that, in my view, shows intent to improve the overall quality of the complex.

In determining good faith I have placed little weight on the Tenant's submission that the rental unit is in good condition and does not need to be renovated. Even if I were to conclude that there were no structural, electrical, or plumbing issues with the rental unit, I find it reasonable for a landlord to renovate an aging rental unit to improve the overall quality of the unit/complex. There is nothing in the *Residential Tenancy Act (Act)* that suggests a rental unit can only be renovated if it is in a state of disrepair, although section 32(1) of the *Act* requires a landlord to maintain a rental unit in a state of decoration and repair that complies the health, safety, and housing standards and, having regard to the age, character, and location of the unit, makes it suitable for occupation by a tenant.

In determining good faith I have placed little weight on the Tenant's submission that the Landlord is completing the renovations simply to improve the value of the property and, by extension, the amount of rent that can be charged. There is nothing in the *Act* that prohibits a landlord from improving the value of his/her property. Given that landlords have the right to end a tenancy for the purposes of making renovations, pursuant to section 49(6) of the *Act,* I find that the legislation clearly recognizes that a landlord has the right to improve the value of a unit by upgrading it.

In determining good faith I note that there is no evidence that would cause me to conclude that the Landlord is being dishonest about its intent to improve the overall quality of the residential complex or that the Landlord has an ulterior motive for ending the tenancy.

I find that the renovations to this rental unit will take approximately 10-12 weeks to complete. In reaching this conclusion I was influenced, in part, by the undisputed evidence that it took over 12 weeks complete similar renovations to unit 601 and a little over 10 weeks complete similar renovations to unit 203.

In reaching the conclusion that it will take approximately 10-12 weeks to complete the renovation, I have placed limited weight on the Tenant's recollection that the renovations in most of the units took 4-6 weeks. Given that the Tenant did not specifically record the start and end dates of the renovations and he was not directly involved with the renovation process, I find that his memory may be flawed.

On the basis of the proposed work schedule and the testimony of the Witness for the Landlord who will coordinate the renovation, I find that it will take approximately 12 weeks to complete the renovation. In determining this matter I placed little weight on the Tenant's submission that the timeline is unreasonable, as he submitted no direct evidence from a qualified professional which supports this submission.

On the basis of the premises liability assessment and the hazard inspection report of unit 602, which at the time of inspection was being renovated in a similar manner to the renovation planned for this rental unit, I find that this rental unit should not be occupied during the planned renovation. I note that there was no evidence presented by the Tenant that suggests the rental unit could be safely occupied during the renovation.

Given the scale of this renovation and the time it will take to complete the renovation, I find that the Landlord requires the rental unit to be vacant for a significant period of time. The *Act* defines a "tenancy" as the right to possess a rental unit under a tenancy agreement. As the Tenant's right to possess the rental unit will be suspended for approximately three months, I find that this tenancy must end to accommodate the renovations.

I find that *Berry v. British Columbia (Residential Tenancy Act, Arbitrator)* is significantly different than the circumstances before me, as the renovations in those circumstances required the suite to be vacant for approximately three days while the renovations in these circumstances will take approximately three months. As the circumstances are significantly different, I was not guided by *Berry v. British Columbia (Residential Tenancy Act, Arbitrator).*

I note that I have not been guided in this matter by the information in the redacted copy of the Residential Tenancy Branch decision which was submitted in evidence. This is consistent with section 64 (1) of the *Act*, which compel me to make each decision or order on the merits of the case as disclosed by the evidence admitted and does not bind me to follow other decisions under this Part.

I find that the Landlord has established it has grounds to end this tenancy in accordance with section 49(6) of the *Act*. I therefore dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy.

I find that the Tenant's application is without merit, and I therefore dismiss his application to recover the filing fee from the Landlord that was paid for filing this Application for Dispute Resolution.

Conclusion

As I have determined that the Landlord has grounds to end the tenancy pursuant to section 49(6) of the *Act,* and I have dismissed the Tenant's application to set aside the Two Month Notice to End Tenancy, I grant the Landlord an Order of Possession, as requested at the hearing.

The Order of Possession will be effective on December 31, 2014 at 1:00 p.m. The date of the Order of Possession was selected in an attempt to provide the Tenant a reasonable opportunity to locate alternate accommodations due to the fact this hearing was convened just ten days prior to the effective date of the Notice to End Tenancy; this decision was delayed as a result of the Landlord desire to record the proceeding; and the Tenant will not even receive this decision until after November 30, 2014.

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: December 08, 2014

Residential Tenancy Branch