



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RCO Development Partners Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF, OPL

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The Hearing was conducted by conference call. The hearing began on March 2, 2016 and the hearing was adjourned and reconvened to continue the hearing on March 7, 2016. As set out in my interim decision dated March 2, 2016 the matter was adjourned to allow the tenant an opportunity to respond to documentary evidence submitted by the landlord. In the interim decision, the landlord's application for an order of possession pursuant to a 10 day Notice to End Tenancy was adjourned to be heard with the tenant's application to cancel the Notice to End Tenancy on March 16, 2016.

The landlord and the tenant exchanged documentary evidence after the March 2nd hearing. The new evidence was not available for me to review at the time of the March 7th hearing, but I heard the submissions of each party with respect to the documents and I obtained and reviewed the new evidence from each party before issuing my decision on this application.

Issue(s) to be Decided

Should the two month Notice to End Tenancy for landlord's use dated December 31, 2015 be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Background and Evidence

The rental unit is an apartment located above a commercial rental property in North Vancouver. I was not provided with a copy of the tenancy agreement. The tenancy began in or about November, 2013. The monthly rent is \$1,100.00 and the tenant paid

a security deposit of \$550.00 at the start of the tenancy. The landlord purchased the rental property and an adjoining property in March, 2015. The Landlord wrote to the tenant on April 27, 2015 to advise that it had purchased the rental property and intended to proceed with plans for major renovations that would require the property to be vacant. The landlord gave the tenant a two month Notice to End Tenancy that required the tenant to move out by July 1, 2015. On June 12, 2015 the landlord withdrew the Notice to End Tenancy and informed the tenant that the tenancy would continue as before on a month to month basis.

The landlord served the tenant with a second two month Notice to End Tenancy dated December 31, 2015. This Notice required the tenant to move out of the rental unit by March 1, 2016. The tenant applied for dispute resolution on January 15, 2016 seeking an order to cancel the Notice to End Tenancy. She later applied to amend her application to claim for orders requiring the landlord to perform repairs to the rental unit. The Notice to End Tenancy was give on the ground that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in manner that requires the rental unit to be vacant. The tenant withdrew her application for repairs before the hearing on March 2nd.

The landlord's representative testified that he together with a partner purchased the rental property and an adjacent building next door to the rental property with the intention of renovating both properties. The rental unit occupied by the tenant occupies the upper floor of the building. The lower floor is a commercial rental unit that housed a Chinese restaurant, now closed and out of business. The rental unit occupied by the tenant and the lower commercial unit each have separate civic addresses. The adjacent building is similarly configured with upper rental units and lower commercial space. The landlord's representative said that he gave the tenant a Notice to End Tenancy after the District of North Vancouver (hereinafter "District") advised him that there could be no residential tenants in the building when the work was started. When the landlord learned that he needed a permit in hand from the District before giving the Notice to End Tenancy he withdrew the Notice.

The landlord's representative testified that he obtained the necessary permits before he gave the tenant the second Notice to End Tenancy for landlord's use. He offered the tenant the opportunity to move to another apartment in the adjacent building at her current rent for a fixed term to April 30, 2016, with her first month free. The landlord said that after April the rent would return to its advertised rate of \$2,000.00 per month.

The tenant declined the offer; at the hearing she denied that the letter accurately stated the offer made to her. The landlord then served her with the two month Notice to End

Tenancy. The landlord referred to permits obtained from the District for work to be done to the rental property. The work to be done was listed on the permits. As set out in a permit issued July 24, 2015, the work to be done to the restaurant space beneath the rental unit included the following:

1. Remove all debris from storage and electrical rooms.
2. Remove T-Bar ceiling and lighting.
3. Remove non-structural walls around front bathrooms. Keep one bathroom in operation.
4. Sever the gas service to the former restaurant. Leave gas service line for upstairs residences.
5. Cut and cap all non-essential plumbing from interior walls.
6. Power clean walls and floors.
7. Fresh paint on interior walls.
8. Repair locks on front and back doors.
9. Remove awning on front of the building and banner on south wall with (name) signage.

A second permit issued December 8, 2015 covered work that included:

Change of use from Restaurant to Retail, fire rate ceiling upgrade, remove bearing wall and universal washroom.

The landlord's representative referred to an e-mail to the landlord from the District Building Inspector dated July 14, 2015. In the message the Building Inspector listed items that must be included in the landlord's building permit application. One of the stated requirements was:

- Confirmation from you in writing that: prior to working under this permit, there will be no residential use/occupants in the building.

The landlord submitted a copy letter from its contractor engaged to perform work to the rental property. In the letter dated March 4, 2016 the contractor said that it was ready to commence work on March 9, 2016. The contractor said in the letter that:

The scope of work will include, but not limited to: demolition; removing part of the upper floor system; shoring of walls. In order for (name of contractor) to perform the work the units upstairs must be vacant as they will not be safe for an occupant nor will our insurance allow the occupancy. If the unit is not vacant we cannot commence the work which will delay the project and trades.

The work will take approximately five to six months to complete.

The tenant disputed that the address referred to in an e-mail from the District included the address of the rental unit. The tenant submitted that the work to be done under the permit does not require the landlord to have vacant possession of the rental unit. She said that most of the work set out in the permit has already been done, while she has occupied the rental unit.

The tenant disagreed with the statement contained in the e-mail from the District. She said that she has received contradictory information from other employees of the District and the employee who authored the e-mail no longer works for the District.

The tenant submitted that the July e-mail suggested that permits would not be issued until the building was vacant, yet permits were issued while the building was fully occupied. The tenant said that despite the landlord's Notice to End Tenancy seeking to evict her, he has rented to new tenants who have moved into other rental units.

Analysis

The tenant suggested that the District issued the July 2015 building permit without requiring that the building be vacant. She said she has contradictory advice from the District and she said that she is familiar with construction and renovations and in her view none of the work to be done requires that her unit be vacant. She referred to communications that she exchanged with the District's building inspector.

Contrary to the tenant's submission, the July 14, 2015 e-mail from the District did not require the building to be vacant before a permit would be issued. The e-mail stipulated that before any work was done under the permit there would be no residential occupants in the building.

The tenant raised an issue as to the civic addresses. The landlord established that the two civic addresses refer to the upper and lower unit of one building on the rental property.

The tenant submitted that the District may require the landlord to take safety precautions during construction, but she submitted that does not mean that the tenant must move out of the rental unit. She said the work was analogous to a store undergoing renovation in a mall which would not require all other tenants in the mall to leave during the renovation. She also said that the landlord's contractor referred to

work that was not included in the building permits, but I note that the December, 2015 permit referred to the removal of a bearing wall and a fire rated ceiling upgrade. The landlord said that the work will affect the floor of the rental unit and its structural integrity. I accept the landlord's evidence and that of his contractor that the scheduled work cannot proceed until the rental unit is vacant.

The tenant referred to new occupants said to have moved in to other rental units in the two buildings. The so-called new occupants were not residential occupants, but commercial tenants who are using the vacant space for storage of commercial fixtures.

I find that the landlord has proven that he has all the necessary permits to repair the rental property in a manner that does require the rental unit to be vacant. I accept the landlord's evidence that the work will take five or more months to complete. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy for landlord's use. The effective date of the Notice to End Tenancy was March 1st, 2016 and I grant the landlord an order of possession effective two days after service on the tenant.

Conclusion

The tenant's application has been dismissed. The landlord has been granted an order of possession.

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 15, 2016

Residential Tenancy Branch

