



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Harbour Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by two of the tenants; the landlord's agent and their witness.

While both parties confirmed that they had received each other's evidence they also confirmed that the landlord served the tenant personally with their evidence on Saturday, May 6, 2017.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 2 Month Notice. I exercise my discretion to dismiss the tenant's claim for compensation. I grant the tenant leave to re-apply for her monetary claim.

Residential Tenancy Branch Rule of Procedure 3.15 requires the respondent to ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

From the testimony of both parties I find the landlord failed to serve the tenant with their evidence in compliance with Rule of Procedure 3.15. As such, I have not considered any of the landlord's documentary evidence.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 30, 2003 for a fixed term tenancy that began on July 1, 2003 and was noted to end on June 30, 2003 for a monthly rent of \$650.00 due on the 1st of each month with a security deposit of \$350.00; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2017 with an effective vacancy date of May 31, 2017 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent testified that the landlord intends to complete a major renovation to the property, however no structural work is planned that might require permits. The landlord also stated that while there is no intention at this time to do any electrical work that might require permits; they cannot confirm that no electrical work will be required until they start the repairs.

In addition, the landlord also stated that they are unable to fully understand the full scope of the work required, at this point. The landlord is unsure if any remediation will be required for any damage to the property that is hidden behind the cabinetry and walls.

The landlord submitted that specifically, the landlord intends, at the time the Notice was issued to:

- Remove two existing layers of flooring and replace all flooring in the rental unit, which requires the temporary removal of the toilet and hot water tank;
- Remove and replace all windows, including sill repairs;
- Remove and replace all kitchen cabinetry;
- Remove and replace the rusting bathtub.

The landlord's witness confirmed the scope of work and included that for a period of time all plumbing fixtures will need to be removed; that the kitchen and bathroom will not be functional during this period; and there is no telling at this time if any remediation will be required to any potential water damage or mould resulting from the current condition of the rental unit.

The landlord submitted that they had completed some of this work in the adjoining rental unit after the previous tenants moved out of that unit but that the condition in the subject rental unit has now deteriorated to a point where the work must be done and cannot wait.

The landlord submitted that the work is planned to begin as soon as the tenancy has ended but that she has not been able to schedule any of the work yet because she does not know if the tenancy will end on May 31, 2017, as per the Notice. The landlord also submits that at this time she cannot predict how long the work will take because it is dependent on what is found after demolition begins and the scheduling and availability of the trades.

The parties both acknowledge that the landlord had attempted to end the tenancy in 2008 for the same reason that landlord intended to complete repairs that required the unit to be vacant.

The tenant submitted into evidence a copy of a letter from the then agent for the landlord, dated March 19, 2008, that states, in part:

"It is with regret I have to serve you this Notice to End Tenancy. The owners have decided the only way to remedy the moisture problem is to do major renovations.

What they are going to do is remove all the flooring, do water meter testing throughout the unit and de-humidify the entire place.

Once they have determined where the moisture is coming from they will affect the necessary repairs. These repairs may include; repair or replacing of windows, changing bathroom fan, installing range hood and venting it outside, painting with a Kilzit paint and replacing flooring."

The landlord testified that during the time since that Notice was cancelled through the dispute resolution process the landlord has painted the rental unit; changed the hot water tank and replaced the stove.

The landlord testified that when they last tried to paint the unit the tenant had been uncooperative and refused to move anything out of the way. The landlord submitted that the unit has 2 bedrooms and 1 bathroom. She stated that there is no place for storage of anything while the work is underway.

The tenant concurs that the rental unit requires substantial work. In support of this the tenant has provided several photographs of the condition of the rental unit. The landlord's agent confirmed, during the hearing, that the photographs submitted by the tenant are an accurate and fair representation of the current condition of the rental unit.

The tenant submits that she should not have to move out of the rental unit because she has been raising the issues that require repairs for several years and the landlord has done nothing about them. She also states that the landlord should be making these repairs so that her family can live in a safe place. The tenant also suggests that the landlord is ending the tenancy because she has made these complaints.

The tenant acknowledges that in the past she has not allowed access to the landlord's contractor because her children (17 years and 20 years) were sleeping and she did not want to expose them to any possible hazardous materials from any work being done.

The tenant also stated that she has already arranged to stay in alternate locations during any renovations because she does not want her family to stay there due to possible exposure to mould and she feels it would be unsafe to remain in the unit during the renovations.

The tenant testified that she has confirmed with local authorities that the landlord has not obtained any permits for any renovation work. The tenant stated that she understood that permits would be required if the landlord intended to complete structural work such as adding a room or removing a wall.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit; or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

While the tenant submits that she believes that the landlord is ending the tenancy because the tenant has repeatedly requested these repairs at least since 2008, I find there is no evidence to support this conclusion. If this was the true intent of the landlord I find it is likely that the landlord would have made several attempts to end the tenancy over the 14 years of this tenancy.

From the evidence submitted by the tenant, I find the landlord has only attempted to end this tenancy once before and it was for the same reason given in this current Notice to End Tenancy. I find one previous attempt to end the tenancy, 9 years ago, in such a tenancy does not provide evidence of any other intent on the part of the landlord.

I note the tenant did not provide any other evidence or submissions that would negate the honesty of the landlord's purpose or demonstrates an ulterior motive for ending the tenancy.

As such, I find the landlord's intentions to complete these repairs are made in good faith.

Based on the submissions of both parties, I am satisfied that the landlord intends to complete a substantial amount of work to the rental unit. I am also satisfied that the scope of the work itself will require, at least for a period of time, the unit to be vacant.

Specifically, I accept that the work intended includes the removal of all facilities for toileting and for meal preparation and food storage. Furthermore, I find the potential for the landlord to uncover dangerous mould while completing the repairs indicates that it may be unsafe to reside in the property during the demolition. I note the tenant agrees with this possibility.

Therefore, I find the landlord has established the work requires the unit to be vacant.

I find that there is no evidence presented by either party that suggests that the landlord is required by any authorities to have any permits for the specified work. While I accept that the testimony of both parties that local authorities would require permits for structural work, I find the landlord has not indicated that any structural work is a part of the planned renovations.

As such, I find the landlord has established all the requirements to end the tenancy in accordance with Section 49 of the *Act*. Therefore, I dismiss the tenant's Application for Dispute Resolution.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy Landlord's Use of Property issued by the landlord on March 31, 2017 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **May 31, 2017 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 11, 2017

Residential Tenancy Branch