



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF CNL RP FF

Introduction:

Both parties were represented by agents they authorized to represent them. The agents gave sworn testimony. They confirmed a Two Month Notice to End Tenancy for Landlord's Use of the Property was dated June 2, 2017 to be effective July 31, 2017. As explained to the agents, the effective date of the Notice is automatically changed pursuant to section 53 of the Act to August 31, 2017 for a two month Notice to End Tenancy must give a full two month's notice and end the tenancy on the day before the day rent is due. The landlord confirmed they received the tenant's Application for Dispute Resolution personally. I find the documents were legally served pursuant to sections 88 and 89 of the *Residential Tenancy Act* (the Act) for the purposes of this hearing. The tenant applies on this Application for orders as follows:

- a) To cancel the two month notice to end tenancy;
- b) To obtain orders to repair
- c) To obtain a rent rebate for repairs not done
- d) To obtain compensation for damages to their furniture and car; and
- e) To recover the filing fee

Issue(s) to be Decided

1. Should the 2 Month Notice dated June 2, 2017 be upheld or cancelled?
2. If cancelled, should the Landlord be ordered to make repairs to the unit?

Background and Evidence

Agents for both parties attended the hearing and were given opportunity to testify, make submissions and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenancy began in September 2015 or 2016, rent is \$675 a month and a security deposit of \$100 was paid. The landlord gave Notice to End Tenancy pursuant to section 49 of the Act stating *The landlord has all the 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 agent explained the landlord's son has some physical challenges and needs to have renovations done for good access

to the elevator. The son wants to have use of part of the unit and the landlord the other part. The agent explained they intend to paint and do the floors in the unit so it would need to be vacant. He said they did not need permits to do this work.

The tenant's agent disputed the notice since she had seen no permits. She said the unit did not need to be vacant to do the repairs noted by the landlord. After discussion, the landlord's agent said they may have served the wrong notice because the landlord wants to use the suite for his family, mainly for his son's needs. I advised him about the correct notice to serve in that case.

The tenant noted problems needing repair. Both parties agreed a pipe broke in the ceiling of the tenant's unit in December or January 2017. Water soaked the floor and the tenant's furniture. The tenants claim they have not been able to use the room as the carpeting was soaked and is still damp and smells mouldy. They request the flooring be replaced with either a new rug or hard flooring. The landlord said the tenants would need to move their furniture out of the room so this could be done.

The tenant noted an ongoing problem with ants which seem to be infesting the unit. The landlord said the tenants are messy and they gave them two cans of spray. The tenants denied they are messy and said the spray is not sufficient to get rid of so many ants. They also want a stove replaced. It works fine but does not fit properly into the space so they believe this contributes to the ant problem.

The tenant asks for \$2000 compensation for the furniture damage caused by the flood and for damage to their car caused by a guest of the landlord. When I pointed out that these matters are usually subjects of insurance claims of the tenant, the agent then asked for compensation for loss of the use of the bedroom for 7 months due to the flood and for landlord negligence in dealing with the ant infestation.

The landlord said the tenant had short paid the rent and the tenant noted there were no receipts ever provided. At this point, I determined that the parties were introducing matters that were not the subject of this hearing and not relevant to the main issue so I declined to hear them pursuant to Residential Rules of Procedure 2.3.

In evidence is the Notice to End Tenancy, statements of the parties including the landlord providing his reasons for issuing the Notice, videos on USB showing damage to the bedroom and the stove not fitting properly. Authority for the agents to attend on behalf of the parties is included.

Analysis

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy two tests as set forth under the *Residential Tenancy Act*. The landlord has issued this Notice pursuant to Section 49 (6) (b) of the *Residential Tenancy Act* which states that a landlord may end a tenancy in respect of a rental unit if:

- 1) The landlord has all the necessary permits and approvals required by law;
- 2) And intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Based on the testimony and documentary evidence the Landlord has not applied for permits for this property. That being said, if the scope of the renovation work is only repainting and redoing the flooring, then the Landlord may not require permits for that type of work. The Tenant disputed the eviction notice and argued that they should not have to vacate the rental unit.

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. ..

It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a “loophole” for landlords.”

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the scope of the work being planned, as described in this hearing, that is repainting and flooring, would not require the rental unit to be vacant. While I agree that it would be easier for the Landlord to “fix everything in one go”, there is no indication that this tenancy should have to end to accommodate a request simply

to make the renovations less expensive or easier for a landlord. While both parties may be inconvenienced during the renovations or repairs, common law, as quoted above, supports that a tenancy does not have to end in those situations. . Based on the above, I uphold the Tenant's application and cancel the 2 Month Notice to end tenancy issued June 2, 2017.

I note the landlord's agent realized they may have used the wrong reason under section 49 to end the tenancy as the landlord's goal is to use it for his son's ease of access and partly to expand his own premises. If so, I find the landlord must serve a Notice with the correct reasons.

In respect to repairs requested by the tenant, I find Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The undisputed evidence supports that the rental unit is in need of some repairs. I find the water flood into a bedroom from the broken pipe in December or January 2017 has caused moisture and possible mould in the carpet flooring. I find the landlord knew of this problem since it occurred as they arranged to have the pipe repaired immediately. I find this moist and possibly mouldy flooring does not comply with health standards and I order the landlord to replace this flooring and the tenant to clear the room of the furniture as necessary to have the flooring replaced. **I note the landlord was advised in the hearing that he cannot lock the tenants out of this bedroom (as the agent suggested) after the floor is repaired. The tenants must continue to have use of the bedroom.**

I find the continued infestation of ants is also a violation of health standards and I order the landlord to obtain the services of Professional Pest Control to eradicate the ants. I find insufficient evidence that this infestation of ants is caused by the tenant.

In respect to the tenants' claim for compensation for damage to furniture and a car, I find the tenants are obligated to have their own tenant insurance to cover damage to their belongings. I dismiss this claim of the tenants.

Regarding the stove that does not fit properly, I find it is a working stove and I find the landlord is under no obligation to replace it in order to make it "fit better". I find it improbable that this is causing the ant infestation and I dismiss this portion of their claim.

In summary, I find the tenants entitled to a rent refund of \$25 a month for 7 months to compensate them for the loss of use of a bedroom and the nuisance of the ant infestation. I note the landlord submitted their rent is already significantly below market rent and I take this into account in the award of \$25 a month for a total of \$175 for 7 months.

Conclusion:

I set aside the Notice to End Tenancy dated June 2, 2017. The tenancy is continued. I find the tenant entitled to recover their filing fee of \$100.

I HEREBY ORDER THAT the landlord must give the tenant 48 hours notice when necessary to move their furniture out of the damp bedroom. I HEREBY ORDER THE LANDLORD to remove and replace the flooring in the damp bedroom within those 48 hours and by AUGUST 31, 2017.

I HEREBY ORDER the landlord to obtain the services of a Professional Pest Control Service to eradicate the ants by AUGUST 31, 2017.

If the landlord does not comply with these orders by AUGUST 31, 2017, I HEREBY ORDER that the tenants may deduct \$50 from their rent for each month of noncompliance commencing in September 2017.

In addition, I HEREBY ORDER the tenant may deduct \$275 from their rent for September 2017 to recover their \$175 compensation awarded in this hearing plus the \$100 filing fee.

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: July 27, 2017

Residential Tenancy Branch