Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd. and [tenant name suppressed to protect privacy]

DECISION

CNL – 4M FF

Dispute Codes

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on December 17, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- Cancel the Landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the landlord's Notice cancelled?
    - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Registered mail tracking information shows the Tenant received the Notice on October 2, 2019. The Notice indicates the landlord is ending the tenancy because he "*is going to perform renovations or repairs that are so extensive that the rental unit must be vacant*."

As part of this Notice, the Landlord estimated that the unit will need to be vacant for 18 months for the renovations. The Landlord also selected the box indicating that:

- I have obtained permits and approvals required by law to do this work

The Landlord indicated on the Notice that the permit from the City of Vancouver was received on September 6, 2019.

In the hearing, the Landlord stated that this rental unit is part of a 23 unit building in Vancouver, which is being "completely gutted" and reconfigured inside. The Landlord pointed to the different permits and the construction letter he provided into evidence. The development permit, issued on July 31, 2019, is for the following:

> ***Project Description***
> *To provide interior alterations, adding washer/dryers and new kitchens to all suites and converting studio units to one bedroom, specific one-bedroom units to 2-bedroom & 2-bedroom penthouse unit to 3 bedrooms, in this existing 23 unit multiple-dwelling building.*

The Landlord also provided a copy of the building permit, issued on September 6, 2019, which was issued for the following:

> ***Project Description***
> *Interior and exterior alterations to existing suites and the addition of five dwellings units (four on the main floor, one on the 4th floor) to this existing four storey residential building. Scope of work to include a fire alarm upgrade.*

The Landlord also provided a letter from the construction company they have hired to do the work. This letter was written on November 12, 2019, and states that the necessary building permits have been obtained to start work, and the work is scheduled to start on February 1, 2020. The letter states that it is not feasible to have tenants living in the building during the renovations, and the time frame for the project is 8-12 months. The letter outlines the work as follows:

The scope of work is includes:

- Removal of hazardous materials
- Replacement of most or all plumbing fixtures including re-piping as required
- Replacement of most or all electrical fixtures including re-wiring as required
- Re-configuration of existing living units
- Construction of 5 additional living units
- Changes to the building envelope

The Landlord explained that this project has been in the works for 3.5 years and they have been working closely with the City of Vancouver to ensure things are done lawfully. The City also has a tenant relocation program, which is independent of this Notice. The Tenant was provided access to that program. The Landlord elaborated on the work plan, and stated that all of the units in the building will be vacant for the renovations because there will be varying separate 4-8 week periods where there won't be any water, sewer or electrical to the building.

The Landlord explained the following stages to the work plan:

1) Hazardous Materials demolition – since there has been asbestos identified in the flooring of many of the units, the Landlord will have to remediate this, prior to doing the remaining work.
2) Non- Hazardous Materials demolition – during this phase, the contractor will remove all existing interior walls. Only the perimeter walls will remain in tact. The kitchens and bathrooms will be relocated and reconfigured, and the layouts changed.
3) Electrical and Plumbing work – main panels changed for the whole building, relocation of outlets in suites. Replacement of old plumbing lines, sewer upgrades.
4) Re-frame walls – put in new walls to change layout of all suites, including the suite in question.
5) Drywall – put in new drywall into all units
6) New lighting – replace all light fixtures
7) Painting – repaint all walls

The Landlord stated that the project has a budget of around $5,000.000.00, and although it is scheduled to take around 8-12 months, it has a high likelihood of going over this time, given the scope of work and his experience with other similar projects. The Landlord feels that the allegations of bad faith are unfounded, as the entire building is being completely renovated, and it has nothing to do with this Tenant.

The Tenant stated that they had a hearing in 2014, where the Landlord tried to evict them for another reason, and the Tenant feels this is yet another attempt to get her out, unlawfully and in bad faith. The Tenant stated she has lived in the unit for 14 years, and she is on a month-to-month tenancy.

Ultimately, she stated she believes the Landlord is not acting in good faith, and she does not believe vacant possession is required for the work. The Tenant stated that she is also willing to relocate for the duration of the renovation so that she can continue the tenancy. The Tenant referred to the case of *Berry and Kloet v British Columbia*, to highlight that just because the Landlord has the permits, it doesn't mean the Landlord has to end the tenancy if she wants to move back in once the renovations are complete. The Tenant further stated that, although there are permits issued, they do not specifically refer to her unit, and there is no specific reference to hazardous materials in her unit. The Tenant does not feel the Landlord has demonstrated their good faith intentions, or that the renovations require vacant possession.

The Tenant further pointed to some ads they found online, showing the Landlord has been renting out units in the building, and has recently posted ads trying to find people to live in the suites. The Tenants noted that some of these ads are for a rental starting January 1, 2020. The Landlord explained and stated that they are in the business of renting vacation rental travel accommodation, and many of their rentals are short term vacation stays of 1-4 months. The Landlord stated that, although they have ads posted for these rentals, none of the units will be rented after February 1, 2020. The Landlord explained that they are trying to maximize their rental revenue leading up to the time the construction starts, and it shouldn't call into question their intentions with respect to the renovations.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to perform the stated purpose on the Notice.

I find the tenant was duly served with the Notice on October 2, 2019. The Notice was served pursuant to section 49(6) of the *Act* which reads:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

a) demolish the rental unit;
b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
c) convert the residential property to strata lots under the Strata Property Act;
d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
f) convert the rental unit to a non-residential use.

Residential Tenancy Policy Guideline # 2 - Ending a Tenancy: Landlord's Use of Property, states as follows:

When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.

[…]

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish

that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- *a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));*
- *a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*
- *a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).*

I further note the above Policy Guideline speaks to the relevant case law, and the requirements to end the tenancy for renovations. It states as follows:

In Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 (see also Baumann v. Aarti Investments Ltd., 2018 BCSC 636), the BC Supreme Court found there were three requirements to end a tenancy for renovations or repairs:

1. *The landlord must have the necessary permits;*
2. *The landlord must intend, in good faith, to renovate the rental unit; and*
3. *The renovations or repairs require the rental unit to be vacant.*

In order for the third requirement to be met:

a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and
b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

In considering this third requirement, an arbitrator must determine first whether the unit needs to be empty (i.e. unfurnished and uninhabited) for the renovations to take place, and second, whether the required emptiness can only be achieved by ending the tenancy. A landlord cannot end a tenancy for renovations or

> *repairs simply because it would be easier or more economical to complete the work.*
>
> *If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.*

First, I turn to the 3 main components as laid out above (as per *Berry and Kloet v British Columbia)* that must be in place in order for the Landlord to end the tenancy in this manner. With respect to the first point, I find the Landlord has sufficiently demonstrated that they have the necessary permits to start their large scale renovations. These permits were in place before the Notice was issued. I note there is a development permit, and building permit, showing that this project is approved and that a large-scale building renovation is approved. I also note there is a letter from the contractor corroborating the nature, scope and timing of the work. I find the Landlord has sufficiently demonstrated they have the necessary permits to begin the work.

With respect to the second requirement, I note the Tenant has questioned the Landlord's good faith intentions. This appears to be largely due to the appearance of further rental ads, recently, attempting to rent other units in the building. I do not find there is sufficient evidence from the Tenants to show that the Landlord is attempting to rent out the other units in the building beyond the February 1, 2020, construction start date. It appears some of the ads posted recently by the Landlord have a short term focus, which is consistent with his intention and motivation to rent the units out, even if just for short term monthly rentals, in such a way as to maximize rental revenue leading up to the construction start date. The Landlord has the necessary permits to start the work, and has engaged a contractor, who also provided a letter of support. Although the Tenant points to the fact that the building permit does not mention her unit, I note it is a project much larger in scope than that, and includes all units in the building.

I also note the Tenant questions the Landlord's good faith intentions because of the fact the Landlord has issued them a Notice to End Tenancy in the past. However, I also note that Notice was for Cause, and was 5 years ago. These renovations appear to be related to a large scale building remodel, which has been undertaken since that time, which is not related to issues for cause on that Notice.

Ultimately, I find the Landlord has sufficiently demonstrated his good faith intentions with respect to this Notice.

With respect to the third part of the test laid out in *Berry and Kloet v British Columbia*, I note that it has two subcomponents to it:

> *a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and*
> *b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.*

I find there is sufficient evidence to show that the renovations are such that it is not reasonable or practical to live in the unit (or leave any possessions behind). It appears there will be several months where there will be significant interruptions to the power, water, electical or sewer to the building. Additionally, many of the walls will be opened up, and reconfigured. The Landlord is modernizing and reconfiguring every suite in the building, including this unit. I am satisfied the work requires the unit to be empty.

The second part of this third part of the test involves determining whether or not the only way to achieve this emptiness is by terminating the tenancy. In *Berry and Kloet v British Columbia*, the Judge elaborated on this multi-part test and said that if the Tenant is willing to vacate the rental unit during the renovations, then it is not necessary to end the tenancy. The Judge went on to state in paragraph 23 as follows:

> *[23] 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.*

The Judge went on to reject the argument presented to him that vacancy, even for a very short period of time, is sufficient to end the tenancy in this type of situation. He stated as follows in paragraph 26 and 27:

> *[26] The irrationality of her conclusion is in effect acknowledged by the respondents in their submissions. Counsel observed that there was no minimum time frame for necessary vacancy set out in the Act. He noted that, on the facts before her, the Dispute Resolution Officer determined that three days was enough – that is to say, if the tenants had to vacate the premises for three days, the requirements of the statute would have been met. He also observed that in other*

> *cases, perhaps one day is enough if "for example, hazardous insulation is being removed".*
>
> *[27] The problem with this interpretation is that it ignores the second dimension of the "vacancy" requirement. On this interpretation, if a Dispute Resolution Officer found that any period of vacancy was required for a renovation, even a single day, a tenancy could be terminated. Such a finding flies in the face of the purpose of the statute, which is to balance the rights of tenants and landlords. It is irrational to think that a landlord could terminate a tenancy because a very brief period of emptiness was required.*

Having considered the principles laid out in the above case, I find it important to note that, although that case provides important clarity and guidance on some aspects of ending a tenancy for renovations requiring vacant possession, I find the facts of that case are distinguishable on an important point. In that case, I note the Judge found the arbitrator erred in not considering the relatively brief period of time the unit was required to be vacant and that the Tenants were willing to vacate, and return, once the renovations were completed.

In that case, the flooring was being refinished, and it was only set to last for 3 days. I find that fact pattern is materially distinguishable from this situation, as the Landlord, in this hearing, has demonstrated that the renovations are much larger in scope and duration. More specifically, the Landlord has stated the renovations could last 8-12 months, maybe even more, which is corroborated by the letter from the contractor.

As shown in the excepts above, the judge in *Berry and Kloet v British Columbia,* focused and provided context surrounding shorter term examples where vacant possession was required (days). I do not find the second part of the three part test from *Berry and Kloet v British Columbia*, is helpful or applicable in this situation, given the substantial difference in time required for the renovations between that case and this case.

Having considered the totality of the situation, I do not find it is reasonable, given the extended and potentially variable timelines of the renovations, to expect the tenancy to continue while the renovations complete over a period of approximately 1 year. I find the Landlord has sufficiently demonstrated that the tenancy must end in order for the

renovations to be completed. I dismiss the Tenant's application to cancel the Notice. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, effective January 31, 2020, at 1pm, which is the effective date of the Notice.

As the Tenant was not successful with her application, I dismiss her claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective January 31, 2020, at 1 PM, after service on the Tenant. If the Tenant fails 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: December 20, 2019

Residential Tenancy Branch