Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Manor Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for an order to cancel a four month notice to end tenancy for demolition, renovation, repair or conversion of rental unit pursuant to sections 49 and 55.

The tenant attended the hearing with an support person and an advocate, TL. The landlord was represented at the hearing by property manager, TB ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I issue a decision to resolve this dispute based on the testimony and evidence of the parties.

Issue(s) to be Decided

Should the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including

photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The tenancy began with a previous owner however his company purchased the building in approximately August of last year. This tenant's tenancy began on May 1, 2003 with rent payable on the first day of the month. Rent is currently $482.78 per month and the landlord is holding the tenant's original security deposit of $335.00.

The building contains 43 units and almost all of the tenants have vacated the building with the exception of a few tenants. 75% of the work to renovate the building has been done. It costs the landlord between $8,000.00 and $10,000.00 to renovate each unit. Each unit will be "gutted". On March 2, 2020, the landlord served the tenant with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("Notice"). The tenant acknowledges it was posted to her door on that date.

The Notice states 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. The planned work is:

- New kitchen
- New bathroom
- Repaint unit
- New windows

Under 'details of work' the landlord lists:

- New cabinets in kitchen
- Appliances changed
- Windows changed
- New floor
- New tub
- Plumbing repaired if needed
- Closet doors repaired if needed

The landlord submits that it's impossible for the tenant to remain living in the rental unit while the work is being done. The landlord testified the plumbing will be removed up to the wall, but not inside the wall.

No permits were required to do the work. The landlord testified he checked with the city and they say it's not required. He, himself is not a certified contractor and is not actually doing the work. The landlord gave the name of the company doing the renovation work during the hearing. In evidence, the landlord provided a letter dated January 31, 2019 which reads, in part,

> *We have contacted the city of [withheld] on multiple occasions to confirm if a building permit is in fact required and with each attempt, we have been told the answer is no. The reason for the requirement not to have a building permit is due to the fact that the work being performed is neither altering the building beyond its original intended purpose and layout and we are not reconstructing the building, which would generally only apply in the form of damage being sustained to the building in some form of an event or prolonged exposure to water and etc.*

The letter does not provide the name of the person who drafted the letter; a signature of the writer, or any contact information for the author although the letter ends with *'please do not hesitate to contact us should you have any additional questions*.'

Lastly, the landlord testified that once the renovations are done, the rent for this bachelor suite would be market rate at approximately $950.00 per month, not the $482.78 the tenant currently pays. The tenant has been offered the choice to enter into a new tenancy agreement with the landlord at the new rate once the renovations have been completed.

The tenant's agent submits that the renovations listed in the landlord's notice to end tenancy are all cosmetic, referencing the Residential Tenancy Branch Policy Guideline PG-2B. The tenant is prepared to accommodate the renovations by moving out temporarily if the landlord requires the rental unit to be temporarily vacant but believes the tenancy should remain intact at the conclusion of the renovations.

The tenant's agent further submits that the landlord did not provide any letter from the city indicating permits are not required for the renovations. Lastly, the agent submits that the current landlord purchased this building knowing the state of the rental units

and knowing how much each tenant was paying. The repairs are not urgent and there is no need to end this tenancy for the landlord's renovations.

Analysis

The tenant acknowledges receiving the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit when it was posted to her door on March 2, 2020. She filed to dispute the Notice on March 12, 2020, well within the 30 days she had to dispute it in accordance with section 49 of the *Act*.

49(6) of the *Act* 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.

[emphasis added]

The requirements to have the necessary **permits** is further addressed in Residential Tenancy Policy Guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] which states in part B [Permits and approvals required by law]:

> *When ending a tenancy under section 49(6) of the RTA or 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. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.*
>
> *The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all*

> *relevant statutes or policies at the time that the Notice to End Tenancy is issued. "Permits and approvals required by law" can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose…*
>
> *…*
>
> ***If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy**. Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.*

During the hearing, the landlord testified that permits are not required for the renovations to be done. The landlord did not provide the testimony of a certified tradesperson or draw my attention to any specific city bylaws indicating the permits were not required during the hearing. Although it was not specifically mentioned during the hearing, it is altogether possible the building could contain asbestos which would require remediation and inspections by WorksafeBC before floors could be ripped out and replaced. Again, without any supporting documents or expert testimony from a tradesperson, I am not satisfied the renovation work does not require a permit.

Conversely, if the renovations weren't extensive enough to require permits from the city, the landlord should be able to show they were so broad that the tenant needed to provide the landlord with a vacant possession of the unit to undergo the renovations.

Part E of Policy Guideline PG-2B provides guidance regarding the **vacancy requirement** when ending a tenancy.

> Section 49(6)(b) allows a landlord to end a tenancy to renovate or repair a rental unit in a manner that requires the rental unit to be vacant. *In Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator) (2007 BCSC 257),* the BC Supreme Court found that "the renovations by their

> nature must be so extensive as to require the rental unit to be vacant in order for them to be carried out." The Court found "vacant" to mean "empty". The Court also found that **it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.**
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> In *Aarti Investments Ltd. v. Baumann. (2019 BCCA 165),* the Court of Appeal held that the question posed by the *Act* is whether the renovations or repairs "objectively" are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, according to the Court of Appeal, the tenant's willingness to move out and return to the unit later is not sufficient evidence to establish objectively whether vacancy of the rental unit is required.
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> In *Allman v. Amacon Property Management Services Inc. (2006 BCSC 725),* the BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the "nature and extent" of the renovations or repairs require the rental unit to be vacant.

The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). During the hearing, the tenant repeatedly told me she would be willing to temporarily vacate the rental unit and retain the tenancy agreement with the landlord. The landlord testified the intent was to have the tenant pay market rent for the tenancy after the renovations were completed. I find that in a situation where the tenant is willing to accommodate the landlord in doing the renovations to the rental unit and willing to provide vacant possession of the unit, there is no requirement to end the tenancy. As the court found in *Berry and Kloet v British Columbia*, **it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.**

Lastly PG-2B indicates:

> *Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely*

extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:
• replacing light fixtures, switches, receptacles, or baseboard heaters;
• painting walls, replacing doors, or replacing baseboards;
• replacing carpets and flooring;
• replacing taps, faucets, sinks, toilets, or bathtubs;
• replacing sinks, backsplashes, cabinets, or vanities.

I have reviewed the planned work for the rental unit and find that work intended for the rental unit is cosmetic. I am not satisfied the renovations planned for the unit objectively and reasonably require the rental unit to be vacant to carry them out.

The landlord has not provided sufficient evidence to satisfy me that no permits and approvals are required by law to do the work intended for the rental unit. The landlord has not provided sufficient evidence to satisfy me the tenancy must end in order to perform the renovations on the rental unit. The landlord has not provided sufficient evidence to satisfy me that the nature of the work intended is beyond cosmetic, as identified by Policy Guideline PG-2B. For these reasons, I cancel the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit. This tenancy will continue in accordance with the *Act.*

Conclusion

The Four Month Notice is cancelled an of no force or effect.

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, 2020

Residential Tenancy Branch