DECISION

Dispute Codes PFR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for vacant possession of the rental unit to perform renovations or repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not making a prohibited recording at this hearing.

Preliminary Issues

The tenant testified that they were just notify of this hearing as they discovered an email that was sent to them in September 2021, by the landlord to an email address that they only use for etransfers.

The landlord testified that they tried to serve the tenant in person; however, the tenant refused to accept service. The landlord stated they then sent it by email and sent a copy of the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 23, 2021. A Canada post tracking number was provided as evidence.

The Canada post online history shows that on August 25, 2021 the tenant was left a notice card where to pick up the package. On September 2, 2021, a final notice card was left for the tenant and on September 12, 2021 the package was returned unclaimed.

I find the tenant was deemed served with the landlord's application and neglect to pick up the package does not override the deemed served provision of the Act.

At the outset of the hearing the tenant testified that their name is spelled wrong in the application. I have reviewed the tenancy agreement and it appears the tenant may have given an incorrect name at the start of the tenancy, or at least not correct the name in the tenancy agreement. As I do not have any formal identification before me

for the tenant. I have included the name the tenant gave at the hearing “as an also known as” in the style of cause. The tenant is to ensure when they sign legal documents such as a tenancy agreement, they are required to correct any misspelling of their name.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Does the landlord require vacant possession of the rental unit to perform renovations or repairs?

Background and Evidence

The tenancy began on September 1, 2015. Rent at the start of the tenancy in the amount of $700.00 was payable on the first of each month.

The landlord testified that the house was built in 1940 and the main source of heat is a wood stove. The landlord stated that they have to run a 200amp service from the telephone pole to the house and will have to open the walls to install new wiring to support the new heating source, which will be baseboard heaters and a larger 200amp panel will be installed.

The landlord testified that it could take a month or several months, especially if they do some of the work, such as remove the drywall and run the electrical line to keep the cost down as they only need the electrician to do the actual connections.

The tenant testified that this is a 490 square feet home with two bedrooms. The tenant stated that the wood stove is not useable; however, there is a furnace is the basement. The tenant stated they have also added their own baseboard heaters which are plugged into an electrical outlet.

The tenant testified that they are prepared to accommodate the landlord, if necessary, as they have a self-contained travel trailer that they could use when needed.

The landlord argued there is no working furnace in the rental unit. The landlord stated they are not prepared to let the tenant stay in their travel trailer.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

Section 49.2 of the Act states

(1)Subject to section 51.4 *[tenant's compensation: section 49.2 order]*, a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

(a)the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
(b)the renovations or repairs require the rental unit to be vacant;
(c)the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
(d)the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court 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. If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.

In this case, I am satisfied that the landlord has a permit to replace the 100amp service with a 200amp service and install baseboard heating.

However, I am not satisfied that it would take several months simply to add wiring for baseboard heaters. I find this is simply guessing and is on the basis if the landlord

chooses to do some of the work themselves. I find this is not a reasonable plan when ending a tenancy.

The landlord did not provide any evidence from a qualified electrician as to a reasonable timeframe that the actual work would take to be completed. I find it highly unlikely that the work would take any great length of time, with a reasonable plan.

Nor am I satisfied that the entire home would be without power or unusable for the duration of the repair, as often when new wiring is installed it only required brief periods of disruptions to the services and only impacts the area of work.

Further, I have no evidence that it would be unsafe for the tenant to live in the rental unit while the wiring for the baseboards are installed, even if small arears of drywall or paneling have to be removed.

Furthermore, the tenant has indicated they would accommodate the landlord and the work, as they would stay in their self-contained trailer, if necessary, while the repairs were being made. While the landlord objected to the tenant staying in their travel trailer; however, the landlord provided no reasonable explanation for this as there is no evidence that the travel trailer is not permitted to be on the property, and this would be for the sole benefit of the landlord making the repair.

Based on the above, I am not satisfied that the landlord requires vacant possession of the rental unit to make the required repaired. Therefore, I dismiss the landlord's application without leave to reapply.

The tenant is to ensure they do not interfere with any work required and must accommodate the landlord's reasonable requests. The landlord is to ensure they give the tenant proper notice to when the work will commence and any special instructions. The tenant should be aware that temporary discomfort is not grounds for compensation.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 08, 2021

Residential Tenancy Branch