



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

File No: 765531

Additional File(s): 765532, 765533, 765534, 765535, 765536, 765537, 765538, 765539, 765540

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

**John Joseph Brady, Penelope Brady, Kevin D. Tebbutt,
Robert Crudo, Dana Crudo, Henry Ross Waring, Brian D.
Broster, Timothy Spencer Pawsey, Heather Elaine Pawsey,
Kevin G. Clements, Trina MacDougall, Jan Halverson, Roland
McFall, Melissa Mewdell, and Dorothy Wendy Stephenson,
Tenant(s),**

Applicant(s)

And

Gordon Nelson Inc., Landlord(s),

Respondent(s)

Re: An application pursuant to section 49 of the *Residential Tenancy Act* regarding the rental units 1,3,4,5,6,7,8, 11,14,15

at: **1436 Pendrell Street, Vancouver, British Columbia**

Date of Hearing: Not required

Date of Decision: February 15, 2011

Attending:

For the Tenants: Not required, written submissions only

For the Landlord: Not required, written submissions only



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DECISION

Dispute Codes CNL, FF

Introduction

This hearing was conducted by written submissions in regard to 10 joined Tenants' Applications for Dispute Resolution seeking to cancel 2 Month Notices to End Tenancy for Landlord's Use of Property and to be reimbursed the filing fee.

I have accepted that all evidence packages of the parties were timely submitted to both the Residential Tenancy Branch and to the party opposite in accordance with the *Residential Tenancy Act* and rules of procedure. Therefore, all the substantial amount of documentary evidence and submissions were considered. I have addressed only the evidence relevant to my determinations herein.

Issue(s) to be Decided

1. Does the Landlord have all the necessary permits and approvals required by law to renovate the rental units?
2. Were the Notices to End Tenancies issued in good faith with the intention to renovate the rental units requiring vacant possession?
3. Have the Tenants established a basis to have the Notices to End Tenancy set aside?

Background and Evidence

The residential property is a 3 story, 14 unit apartment heritage building, circa 1931, with two bachelor suites, three 1 bedroom suites and nine 2 bedroom suites. Although no tenancy agreements were submitted, the evidence submitted indicated that monthly rent varied among the 10 rental units in question.

The evidence supported that the tenancies were long term, the earliest beginning in 1960 and the most recent beginning in 2006.

The Tenants and the Landlord agree that the Landlord served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on or about November 26, 2010, which declared that the Tenants must vacate their respective rental unit by January 31, 2011. The parties agree that the reason for ending the tenancy stated on the Notice is that the Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The parties agree that the Landlord has the necessary permits required by law.

The parties disagree that the Landlord requires vacant possession and has met the good faith intent required to issue the Notices.

Tenants' Submissions

In support of their claim that the Landlord did not issue the Notices in good faith and did not demonstrate that the rental units required vacant possession, the Tenants submitted evidence including the Notices, letters from various contractors, tradespersons, and a former owner of the building, written correspondence between the Landlord and various Tenants and written summaries.

The Tenants submit that the Landlord acquired ownership of the building on or about July 31, 2008, and immediately made clear to the Tenants their intention to begin eviction proceedings and to raise the rents.

The Tenants submit that they communicated to the Landlord a number of times their desire to remain in their homes and their willingness to accommodate the Landlord's renovation plans. The Tenants submit that their requests for plans and work schedules were met with either a lack of, or later, an insufficient response from the Landlord.

The Tenants provided statements and evidence that the tenants in the building were long term, that they had become like family to each other and would support each other during any proposed renovations, including sharing facilities and living space to accommodate the work.

The Tenants submit that throughout the balance of 2008, the Tenants attempted to reach a resolution with the Landlord, but were unsuccessful. The Tenants submit that in early 2009, the Landlord applied for dispute resolution seeking a rent increase of up to 73%. After the hearing, according to the Tenants, a 38% increase was granted by a dispute resolution officer.

The Tenants applied for a judicial review of this decision, which Madame Justice Loo set aside and returned to the Residential Tenancy Branch for a re-hearing. The Landlord's application for a rent increase was re-heard on October 12, 2010, and dismissed in its entirety. The Tenants submit that the Landlord then issued the Notices ten days later in response to the dismissal. The Tenants submit that they are still willing to work with the Landlord to accommodate the Landlord's renovations.

Landlord's Submissions

In support of their claim that the Notices were issued in good faith and that they required vacant possession of the rental units to carry out the renovations, the Landlord submitted copies of the building, electrical, sprinkler and plumbing permits, a report indicating useful life of a similar building, lists of renovations to be completed, an architect's letter, hazardous material survey and details, an electrician's letter, a plumber's letter and a project management timeline.

The Landlord contends that vacant possession is required due to the necessity of carrying out major renovations to the building to extend its useful life and that they have from the beginning of their ownership attempted to negotiate with the Tenants for vacant possession in order to safely upgrade the building.

The Landlord submits that the building is unsafe in its present condition with outdated electrical and fire alarm systems, and that the heating, electrical, fire and sprinkler system needed updating. The Landlord proposed that the renovation would take three to four months and that the Tenants are not able to safely accommodate all the construction requirements.

The Landlord submits that they have bought and renovated other such buildings and that this experience, along with their experts' opinions, leads them to recognize that vacant possession is necessary.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

The Notices were issued pursuant to section 49(6)(b) of the *Act*, which requires the Landlord to have all necessary permits and approvals, and a good faith intention, to use

the unit for the stated purpose, i.e., to renovate and repair the rental unit in a manner that requires the rental unit to be vacant.

The Tenants here have called into question the good faith of the Landlord in issuing the Notices.

Once the Applicants made an Application to dispute the Notice alleging it has been given in bad faith, the onus is on the Landlord to prove the Notices were issued for its stated purpose.

I am satisfied by the submissions of the Landlord that they have acquired the necessary permits and approvals required by law to renovate the rental units. However, I must further determine if the Landlords satisfy the remaining requirements of 49(6)(b), which comprises a two step test, namely that the Landlord had the "good faith" intention to renovate the rental units requiring vacant possession and that did not have an ulterior motive.

To serve a Notice to End Tenancy in "good faith," the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises, as required by Residential Tenancy Policy Guideline 2. For example, the landlord may intend to occupy the rental unit for the reason stated on the Notice to End Tenancy but the intention may be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant or to end the tenancy for reasons not cited on the Notice to End Tenancy, then the landlord does not have a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

In the circumstances before me I find that, on a balance of probabilities, the Landlord was not acting in good faith when they served the Tenants with the Notices to End Tenancy. Rather, I find that it is likely that the Notices to End Tenancy were served because the Landlord was unsuccessful in their attempt to achieve significantly higher rates of rent for the rental units in question. In reaching this conclusion, I was strongly influenced by the timing of the Landlord's service of these Notices to End Tenancy, which according to the Tenants' submission, was ten days after the parties received a dispute resolution officer's decision dismissing the Landlord's application for an increase in rent up to 73%.

I have also considered the Landlord's letter of October 18, 2008, to all the Tenants involving "constructive brainstorming" suggesting "an increase in rent in exchange for us delaying our renovation initiative for at least two years." I find that the email dated

November 8, 2008, from Landlord JG to a tenant in the building at the time suggesting that if the Tenants paid the Landlord close to market rent immediately, the renovation plans would be postponed, further causes me to conclude that the Landlord had ulterior motives for ending the tenancies.

Therefore, by the Landlord's own admissions, they stated they were willing to postpone renovations for years in exchange for the Tenants paying higher rents. I find by their own words, the Landlord weighed the benefits of receiving higher rents over the need or desire to renovate a building which they claimed was unsafe and required renovations.

I am further persuaded by the Landlord's actions since acquiring ownership of the building on or about July 31, 2008, which on a balance of probabilities, show the Landlord's sole motivation was to achieve significant rent increases through mass evictions. This was demonstrated, in part, by the Landlord's failure to respond to the Tenants' questions regarding the renovation work and schedules, and failure to acknowledge, and subsequent rejection, of the Tenants' offers to accommodate the renovations, as established by letters from the Tenants to the Landlord dated September 8, 2008 and October 8, 2008, reiterated during a telephone conversation on October 11, 2008 and in emails dated November 7, 2008, and November 13, 2008. The Tenants as recently as in a December 9, 2010, letter and December 10, 2010, email to the Landlord again offered to accommodate the Landlord's proposed renovations.

In considering the Landlord's submissions with regard to good faith intent, I find, on a balance of probabilities, their claim is undermined by their ulterior, primary motive of achieving a substantial rent increase.

Therefore, I find that the Landlord is attempting to end these tenancies in bad faith.

As I have found that the Notices to End Tenancy were issued in bad faith, I decline to consider the issue of whether or not the Landlord required vacant possession of the rental units.

Based on these findings, I find that the 2 Month Notices to End Tenancy issued in this matter are not valid and I order them to be cancelled. The Notices are of no force or effect and the tenancies will continue until ended in accordance with the *Residential Tenancy Act*.

Lastly, I also allow Tenant JB the **\$50.00** filing fee for the Application, and allow each other applicant to deduct \$25.00 from their next monthly rent payment. As a point of clarification, each application is allowed the \$25.00 reduction in the next monthly rent payment.

Conclusion

As I find that the Landlord did not issue the Notices in "good faith," I grant the Tenants' applications to cancel the 2 Month Notices to End Tenancy.

I hereby authorize Tenant JB to reduce his next monthly rent payment by \$50.00 and each additional application to reduce their next monthly rent payment by \$25.00 in compensation for the fee they paid to file this Application for Dispute Resolution.

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: February 15, 2011.



D. Vaughn
Residential Tenancy Branch