



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPL, CNL, RP, LRE, O, FF

Introduction

This hearing dealt with two applications: 1) from the landlords for an order of possession for landlords' use of property and recovery of the filing fee; 2) from the tenants for cancellation of a notice to end tenancy, an order requiring the landlords to make repairs to the property, an order suspending or setting conditions on the landlords' right to enter the property and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. While the conference call was scheduled to begin at 11:30am and continue as necessary, at 11:55am the tenant withdrew from the conference call without notice and did not call in again before the conference call was concluded at 12:05pm.

Issues to be Decided

- Whether the landlords are entitled to an order of possession
- Whether the tenants are entitled to cancellation of the notice to end tenancy and/or any orders as set out above

Background and Evidence

Pursuant to a written residential tenancy agreement, the initial year long term of tenancy began in July 2002. Thereafter, tenancy has continued on a month-to-month basis. Currently, rent in the amount of \$1,100.00 is payable in advance on the first day of each month, and a security deposit of \$500.00 was collected at the start of tenancy.

The landlords issued a 2 month notice to end tenancy for landlords' use of property. The landlords submitted into evidence a copy of the 2 month notice dated December 28,

2008 which was served on the tenants by way of registered mail. The reason identified on the notice for its issuance is:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that her mother-in-law will be moving into the unit later this year, most likely during the summer, following completion of renovations to the unit after the current tenancy ends. One of the features of this particular rental unit identified by the landlord as important for her mother-in-law is the absence of stairs.

The tenant challenged the genuineness of the landlords' stated intentions for ending the tenancy. The tenant made reference to problems he and his family have had with the other tenants who moved into the upper level of the rental property in August 2008. Difficulties have included disputes between the two sets of tenants around control of the thermostat for heating the house and around the percentage split of the cost for utilities. The landlord stated that adjustments have been made to the way in which the cost of utilities are split between the two sets of tenants as a result of concerns identified by the tenants / applicants.

Prior to the unannounced exit from the conference call by the tenant, no detailed testimony was provided to support the application by the tenants for an order requesting that the landlord make repairs to the unit or an order suspending or setting conditions on the right of the landlords to enter the rental unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 2 month notice to end tenancy for landlords' use of property. The effective date of the notice is February 28, 2009.

Residential Tenancy Policy Guideline #2 speaks to **Ending a Tenancy Agreement: Good Faith Requirement**, and sets out in part, as follows:

The “good faith” requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.

While the tenants have challenged the genuineness of the landlords’ intentions, I found the responses to queries during the hearing of the landlord in attendance to be straightforward and non-evasive. I also informed the parties during the hearing of provisions set out in section 51(2) of the *Act*:

51(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In consideration of all the information set out above, I find the landlords are entitled to an order of possession and the tenants' application for cancellation of the notice to end tenancy is therefore set aside.

In the absence of testimony or documentary evidence to support the application for orders, I dismiss the tenants' claim for an order that the landlords make repairs to the unit and an order suspending or setting conditions on the right of the landlords to enter the rental unit.

As the landlords have been successful in this application I find they are entitled to recovery of the \$50.00 filing fee for this application. I therefore order that the landlords retain \$50.00 from the security deposit and return the balance plus interest to the tenants within 15 days after the end of tenancy. I dismiss the tenants' application for recovery of the filing fee.

Conclusion

I hereby issue an order of possession in favour of the landlords effective on or before **1:00 pm, February 28, 2009**. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: February 12, 2009

Dispute Resolution Officer