



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a two Month Notice to End Tenancy for the landlord's use of the property and a Monetary Order to recover the filing fee. The tenants have inadvertently applied to cancel a Notice to End Tenancy for cause. As no such Notice has been issued to them they have withdrawn this section of their application.

The tenants served the landlords by Registered mail on September 11, 2009 with a copy of the Application and Notice of Hearing. I find the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Have the tenants provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on March 01, 1998. The tenants rent a one bedroom suite from the landlords for the monthly rent of \$836.80 on a month to month basis. The tenants paid a security deposit of \$700.00. Of this \$350.00 was paid on March 01, 1998 and \$350.00 was paid on April 01, 1998. Recently the landlords have realized that they had over charged the tenants

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for their security deposit and refunded the sum of \$282.00 to them by cheque. The tenants have not cashed this cheque.

The tenants testify that the landlords issued them with a Two Month Notice to End Tenancy on August 28, 2009. The tenants filed an application to cancel this notice on September 10, 2009. The state the reasons the landlord has given in the notice are untrue. The landlords claim they want to live in the property and they have the necessary permits in place to make renovations to the property. The tenants claim the landlords are trying to evict them as they want to use the property for rentals for the 2010 Olympics. The tenants have made inquires to the municipal of Whistler and been told that no new construction will be allowed to take place during the Olympics. The tenants have made inquires to determine if the landlords has obtained permits to carry out renovation work and have been told that no permits have been requested or given.

The tenants also dispute the landlords claim that he is working in the local area and as such requires the rental suite for his own use. The state the hotel bills the landlords have provided in evidence do not confirm that he is working in the area. One bill was dated for the time the landlord spent doing some work at the property and the other bill is for a two day stay when the landlord was allegedly working in the area. The tenants state that working for two days in the area does not qualify as a full time job. The tenants state that the resumes the landlord has sent to prospective employers' all fall on September 17. They submit that the landlord has applied for work after the tenants applied for Dispute Resolution.

The tenants testify that the landlords requested entry to the suite to carry out a final inspection of the suite. When challenged about this being a final inspection indicating that the tenants were moving out, they changed the words to a routine inspection. The tenants claim the landlords did not inspect the suite but came to measure the internal areas instead. The tenants have provided e-mails showing the landlords intention to rent out the lower suite for the Olympics and have applied for an application for rezoning.

The landlords testify that the do intend, in good faith, to occupy the suite. One of the landlords now has a job in the Whistler area and his wife will come to stay at weekends with their children.

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The landlords state that they do have the intention of carrying out some renovations to the property when they move back into it and as such have only submitted a plan layout to the planning and permit office. The landlords drew up the plan when they had access to the suite and opportunity to measure the rooms. The landlords state they have not yet applied for permits to carry out the renovations.

The landlords testify that they attempted to get the tenants to sign a mutual end to the tenancy agreement but they refused. The landlords explained that they did erect a sign on the building concerning temporary commercial zoning for the property downstairs but were told by the city and the tenants that this was a breach of city by-laws so they removed it. They state they did have plans for the downstairs suite as the tenants only had a one year lease but these plans have now been put on hold. The landlord states that they did not have any plans for the upstairs suite as their intention was always to move back to it and renovate it. The landlords state that they have been planning this move for a year.

The landlord has requested an Order of Possession if the Notice to End tenancy is upheld.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenants have been unable to prove, beyond a reasonable doubt, that the landlords are not going to occupy the rental unit. The landlord has provided evidence that he is working in the area and does intend to occupy the rental suite. Therefore, I find that the reason stated on the Two Month Notice to End Tenancy for the landlord's use of the property is valid and the Notice remains in effect. I further find that the landlord does not require permits at this stage to renovate the property as they have stated that these renovations will only take place after they take possession of the suite and therefore are not required at this time. I have determined that this does not make the Notice an invalid document.

I find the tenants evidence is based on supposition that the landlord intends to use the rental property for new tenants during the Olympics. Their evidence does not support their claim that this is the landlord's intention. Much of the evidence relates to the downstairs unit and not the

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tenants suite. The tenants inquires do not support their claim that the landlord has not gained employment in the area. In any event a landlord is entitled to give notice to a tenant if they or a close family member intend to occupy the rental property. The *Act* does not specify that the landlord has to have work in the area in order to do so.

I direct both parties to section 51 of the *Act* which details the compensation for a tenant when a Notice to End Tenancy under section 49 of the *Act* has been issued.

Due to the above I find the tenants application is dismissed in its entirety without leave to reapply.

I find the Notice to End Tenancy is upheld and remains in force and effect. An Order of Possession has been issued to the landlord.

Conclusion

Due to the above I find the tenants application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy dated August 28, 2009 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on October 31, 2009. This order must be served on the Respondent and may be filed in the Supreme Court and 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: October 28, 2009.

Dispute Resolution Officer