DECISION

Dispute Codes MT, CNL, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for more time to apply to cancel a Notice to End Tenancy and to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 28, 2010. The Tenants also applied for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This month-to-month tenancy started approximately 8 years ago. Throughout the tenancy rent has been $850.00 per month payable in advance on the 1st day of each month.

On March 28, 2010, the Landlord served the Tenants in person with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 28, 2010. The ground stated on the Notice was that "all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Landlord also provided the Tenant with a copy of a Contract of Purchase and Sale Addendum dated March 27, 2010 on which the purchaser of the rental property indicated that "they have asked the Landlord to give the Notice because all subjects have been removed and that the purchaser or a close family member intends to reside in the rental unit." The sale of the property completes on May 31, 2010 which is also the effective date on the 2 Month Notice.

The Tenant who attended the hearing said he believes that the new purchaser of the rental property does not intend to reside in the rental property but rather to demolish it. The Tenant claimed that he spoke with 2 sets of surveyors at the end of March and during the first week of April 2010 who advised him that this was the case. The Landlord said he relies on the statement of the Purchaser of the rental property and has no reason to believe that the purchaser requires vacant possession of the property for another reason.

The Tenant who attended the hearing also said that when he moved into the rental property, the rent included a washer and dryer. The Tenant said that the Landlord purchased the rental property in August 2005 and in August 2006, the Landlord was ordered by the municipality to remove the washer and dryer. Consequently, the Tenant argued that he is entitled to compensation for the loss of this facility from August 2006 to date at the rate of $40.00 per month. The Landlord claimed that the Tenant never said anything over the past 4 years about the loss of the washer and dryer and to maintain good will, the Landlord never increased the rent.

The Tenant who attended the hearing further claimed that the gas furnace in the rental property did not work properly for approximately 3 years and that as a result, he has had to use electric heaters which increased his hydro expenses by approximately $7.50 per month. The Tenant claimed that although he did not use the gas furnace for heat, his gas bills were not reduced. The Tenant said the Landlord only started doing repairs to the furnace in October 2009 after he advised the Landlord that there had been some electrical socket fires. The Tenant said that part of the problem was that the Landlord had not repaired a blower properly and that the cycle setting had been switched from automatic to manual 3 years prior.

The Landlord did not deny that a blower was installed incorrectly but argued that the Tenants never told him that the furnace not working properly until December 2009. The Landlord claimed that the Tenants preferred to use electric heat because they could not control the gas heat between the upper and lower units in the rental property. The Landlord said that he took immediate steps to repair the furnace once he knew about it.

Analysis

Section 49.1(5) of the Act says that within 15 days of receiving a 2 Month Notice to End Tenant, a Tenant must apply to cancel the Notice. If a Tenant does not apply to cancel a 2 Month Notice within this time period, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and must vacate it at that time.

Section 66(1) of the Act says that the director may extend a time limit under the Act but only in exceptional circumstances. The Tenant argued that he did not apply to cancel the 2 Month Notice within 15 days after receiving it because he only discovered that the purchaser of the rental property did not intend to use it for the purpose alleged on the 2 Month Notice when he spoke to surveyors. However, the Tenant also claimed in his evidence that he spoke to the surveyors during the last week of March and during the first week of April 2010. Consequently, although the Tenants believed as of April 7th (at the latest) that the property might not be used for the purpose stated on the 2 Month Notice, they did not apply for a further 2 more weeks to set aside the Notice. Consequently, I find that the Tenants' reasons for filing late do not satisfy the criteria for an extension of time to apply to cancel a Notice under s. 66(1) of the Act and that part of their application is dismissed without leave to reapply.

Even if the Tenants had been granted an extension of time to apply to cancel the 2 Month Notice, I find that the Tenants have not shown that the Landlord's reasons for ending the tenancy were dishonest or were not his primary reason for ending the tenancy (see RTB Policy Guideline #2, Ending a Tenancy Agreement: Good Faith Requirement). In particular, the Tenants did not dispute that the Landlord served them with the 2 Month Notice after the subjects had been removed from the Agreement of Purchase and Sale for the rental property and that this agreement was to complete on May 31, 2010. The copy of the Addendum to the Agreement of Purchase and Sale also contains a statement from the purchaser stating his or her intention to reside in the rental unit. Consequently, I find that there is insufficient evidence to conclude that the Landlord acted dishonestly or that the reason set out on the 2 Month Notice for ending the tenancy was not the Landlord's primary reasons for ending the tenancy.

For all of these reasons, the Tenants' application to cancel the 2 Month Notice to End Tenancy dated March 28, 2010 is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect on May 31, 2010.

The Tenants argued that if the rental property sold to the new owners on May 31, 2010, then the Landlord in this matter was not entitled to request an Order of Possession. Section 55 of the Act states that a "landlord" may request an Order of Possession and s. 1 of the Act defines a Landlord to include "the owner, the owner's agent or another person who, on behalf of the Landlord exercises powers and performs duties under the Act or tenancy agreement." The definition of a Landlord under s. 1 of the Act also includes a former landlord. Consequently, even if the Landlord in this matter is no longer the current owner of the rental property, I find that he is authorized by the current owner under the Agreement of Purchase and Sale to take steps to deliver vacant possession. Consequently, I conclude that the Landlord in this matter is entitled to request an Order of Possession in order to deliver vacant possession of the rental property to the new owner.

Section 27(2) of the Act says that if a Landlord terminates or restricts a service or facility, the Landlord must reduce the rent by an amount that is equivalent to the amount of the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The Parties agree that the use of a washer and dryer was included in the Tenants' rent until August 2006 when those appliances were removed. The Landlord argued that the Tenants did not complain about the loss of this service or facility and the Landlord never increased the rent throughout the tenancy.

Section 7(2) of the Act states that a party who claims compensation due to another party's breach of the Act or tenancy agreement must take reasonable steps to minimize their losses. The Tenant who attended the hearing admitted that he did not say anything about the loss of the washer and dryer because he did not want to make waves and jeopardize his tenancy. The Landlord claimed that he was always on good

terms with the Tenants who volunteered to do such things as cutting the lawn at the rental property.

In the circumstances, I find that the Tenants are entitled to some compensation for the loss of the washer and dryer which was included in their rent under their original tenancy agreement. There was no evidence that this term of the tenancy agreement changed when the Landlord purchased the rental property in 2005. There was also no evidence that there was an agreement that the Landlord would not increase the rent to compensate the Tenants for the loss of the washer and dryer. However, I find it unreasonable that the Tenants waited almost 4 years to claim compensation without saying anything to the Landlord and in the circumstances I find that they must bear responsibility for some of their losses. Consequently, I award the Tenants **$480.00** representing $40.00 per month for 12 months for their loss of the washer and dryer.

The Tenants also sought compensation for the loss of use of the gas furnace for approximately 3 years. The Tenants argued that one of them suffered headaches as a result of the gas exhaust being improperly vented and that the furnace smelled and made noise. The Tenants also claimed that they had to use electric heaters which increased their electrical bills. In support, the Tenants provided a written statement from the downstairs tenant who resided in the rental property from 2007 until May 2010. This tenant claimed that the Landlord "was aware of the situation but chose not to repair the furnace." This tenant also claimed that the repairs were not started until October 2009 but were completed 2 months later.

The Landlord claimed that he initially did repairs on the furnace and thought he had resolved the problem because the Tenants did not say anything about it again until December of 2009.

Although the Tenants claimed that they paid increased hydro expenses of $7.50 per month for a 3 year period to run electric heaters, they argued that they would not have paid any less for gas by not using the furnace as their primary source of heat. I find that this argument does not stand to reason and the Tenants offered no evidence in support of it. In particular, I find that there should have been some reduction in the Tenants' gas expenses if they were not using the gas furnace as their primary source of heat. I further find that it was entirely possible that any savings for gas may have offset the Tenants' increased hydro expenses.

The most significant difficulty with this part of the Tenants' claim however, is that there is no reliable evidence that the Tenants brought this matter to the Landlord's attention or that he knew there was a problem with the furnace but failed to repair it for 3 years. The statement of the other tenant of the rental property merely states that the Landlord knew the furnace didn't work but does not say why he believed the Landlord was aware that the furnace did not work properly. Consequently, I find that for all of these reasons, the Tenants are not entitled to compensation for the loss of use of the furnace or for any loss of use and enjoyment of the rental unit due to a malfunctioning furnace and that part of their claim is dismissed without leave to reapply.

As the Tenants have been largely unsuccessful on their application, I find that this would not be an appropriate case to allow them to recover the cost of the filing fee for this proceeding from the Landlord and that part of their claim is dismissed without leave to reapply.

Conclusion

An Order of Possession to take effect on May 31, 2010 has been issued to the Landlord. A copy of the Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia. A Monetary Order in the amount of $480.00 has been issued to the Tenants. A copy of that Order must be served on the Landlord and may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 31, 2010.

Dispute Resolution Officer