

## **DECISION**

**Dispute Codes** CNL, MNDC, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal cross applications by the landlords and the tenants. The landlords have applied for an order of possession for landlord's use and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order that the notice to end tenancy be cancelled as well as a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for return of all or part of the pet damage deposit and security deposit and to recover the filing fee from the landlords for the cost of this application.

The landlord also called a witness, and the witness as well as the parties each gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witness on their evidence.

At the outset of the hearing, the tenants withdrew their application for recovery of the pet damage deposit and security deposit because the application is premature; the tenants still reside in the unit. The tenants have also withdrawn their application to cancel the Notice to End Tenancy because they have purchased a new residence and are moving into it at the end of June, 2010.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy began on May 1, 2009 as a fixed term tenancy which expired on April 30, 2010 and then reverted to a month-to-month tenancy thereafter. Rent in the amount of

\$2,200.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlords collected a pet damage deposit in the amount of \$1,100.00 as well as a security deposit in the amount of \$1,100.00 from the tenants.

The tenants testified that when they moved into the rental unit, the landlord gave them verbal assurance that he would not sell for a minimum of 3 years. The landlord had tried to sell prior to renting, but it didn't sell so he took it off the market, rented to these tenants and gave that verbal assurance. The tenants wanted to stay for 3 years in order to save enough money to buy a house and stay in one place until then.

The male tenant further testified that the garage had been converted into a recreation room prior to this tenancy, and he used it as a photography studio, working out of it every day. He further testified that he had spent approximately \$1,500.00 on house repairs plus \$2,500.00 to convert the recreation room into a studio during the summer of 2009.

In March, 2010 the landlord told the tenants that he was listing the house for sale. The house did sell, and on April 16, 2010 the new landlord delivered a hand-written note, being an agreement to end the tenancy effective at the end of July, 2010, which the tenants signed. They called the landlord later that same day to withdraw their consent to end the tenancy, and the landlord agreed to bring another document in a few days.

During the evening of April 16, 2010, the tenant called the realtor in an effort to reach the purchaser. The realtor emailed the tenants saying that the purchaser did not yet know if he would continue to rent the unit. Then on April 19, 2010, they obtained an address for the purchaser, who took possession of the unit on April 20, 2010. The tenants did not meet the purchaser until April 27. The tenants testified that 5 times during that meeting, the purchaser stated that he was 50/50 undecided about renting it and indicated that he wanted more money for rent and asked what the tenants were willing to pay.

A copy of the 2 Month Notice to end Tenancy for Landlord's Use of Property was submitted as evidence in advance of the hearing. That document states 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 document is dated April 19, 2010, with an expected move out date of June 30, 2010 and is signed by the original landlord. A letter dated April 15, 2010 was provided in evidence by the landlord, which is a request that notice be given to the tenants. The tenants claim that letter was fabricated solely for the benefit of this hearing. However, the landlord has also submitted a letter dated April 19, 2010 from the purchaser to the seller indicating that the purchaser was in agreement to allow the tenants in both suites to remain in their respective suites until the end of July, 2010. The landlord also provided a copy of the Contract of Purchase and Sale Addendum dated April 14, 2010 which states that, "The Seller will provide written confirmation (Mutual Agreement to End a Tenancy) to the Buyer for both tenants to vacate the premise by July 31, 2010 prior to completion."

The tenants also testified that they no longer wish to reside in the unit as they have now purchased a condominium and are moving on June 30, 2010. They did not pay rent for the month of June.

### **Analysis**

The *Residential Tenancy Act* provides that a landlord may issue a 2 Month Notice to End Tenancy for Landlord's Use of Property if the landlord intends in good faith to use the rental premises for the purpose set out in the notice. If the landlord does not use the rental property for the purpose set out in the notice, the tenant is entitled to receive compensation from the landlord in the amount of double the amount of one month's rent. Also, the tenant is permitted one month of free rent after being served with the notice to end tenancy.

The evidence of the tenant was that he had had conversations with the purchaser on April 27, 2010 wherein the purchaser indicated several times that he was unsure

whether or not he was going to continue to rent the unit and was considering raising the rent. He also testified that the purchaser asked him how much he was willing to pay to stay in the unit as a tenant. The landlord did not dispute that evidence. The letter requesting notice be given by the seller is dated April 15, 2010, well before those conversations took place. Further, the Contract of Purchase and Sale is dated April 14 which indicates a July 31, 2010 end date, and the second letter is dated April 19 which gives July 31 as an end date. As a result, I find it difficult to believe that the seller was given a request in writing to give notice to the tenants; the dates of the documents do not corroborate the evidence of the landlord.

The tenants stated that they are moving on June 30, 2010 and did not pay rent for the month of June.

The Residential Tenancy Policy Guideline 2, Ending a Tenancy Agreement: Good Faith Requirement states that:

“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.”

I find that the good faith requirement has not been fully established by the landlord, however the burden of proof will only be called into question in order to determine whether or not the notice to end the tenancy should be cancelled. Since the tenants are vacating the unit, there is no question.

The issue remaining before me is whether or not the tenants are entitled to compensation for the landlord’s lack of good faith in occupying the rental unit. I find that the landlords were either undecided when the notice was issued, or issued the notice just in case the tenants didn’t agree to a rental increase. However, the tenant is at liberty to claim double the amount of the monthly rent if the landlord does not occupy the rental unit for at least 6 months. If the tenants feel that another application ought to be filed when that period has expired, or if the landlords do not occupy the unit soon

after the tenants have vacated, the tenants will be at liberty to re-apply for damage or loss under the good faith requirement.

The tenants have testified that they have purchased a new home and will be vacating the unit on June 30, 2010, which is in compliance with the notice to end tenancy, and therefore, an Order of Possession is justified.

### **Conclusion**

For the reasons set out above, the tenants' application is dismissed.

The landlord will have an Order of Possession effective 2 days after service upon the tenants. If 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.

Due to the nature of the dispute, and the settlement by the tenants in withdrawing their application to cancel the notice to end tenancy, I decline to award the filing fee to either party.

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: July 8, 2010.

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Dispute Resolution Officer