

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlords' Use of Property pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended this hearing at the Residential Tenancy Branch in Burnaby and were given a full opportunity to be heard, to present evidence and to make submissions. The landlords testified that they gave the tenant a 2 Month Notice to End Tenancy for Landlord Use of the property for use as a suite for a resident manager on August 27, 2010. The tenants testified that they provided the landlords with a copy of their application for dispute resolution by registered mail on September 10, 2010. They also said that they gave the landlords a copy of this by hand and by electronic mail. The landlords confirmed that they received the tenants' application for dispute resolution. I am satisfied that the above documents were served in accordance with the *Act*.

### Preliminary Matters

The tenants noted that they provided a copy of their evidence package within the required time frames, but the landlords sent their evidence package a day later. Both parties agreed that they had an opportunity to review these evidence packages before the hearing. Both parties asked for permission to have additional late evidence considered as part of this hearing. The landlords had provided one of these documents to the tenants before the hearing; the tenants provided one of these documents at the

hearing. Neither party objected to the consideration of the late evidence presented at the hearing. I have considered the late evidence submitted by both parties.

Both parties submitted extensive written evidence before the hearing. Some of this evidence pertained to a series of dispute resolution proceedings since the landlords purchased the property over two years ago. Both parties identified witnesses whose testimony did not appear essential or relevant to the issue in dispute in this application.

The tenants asked to call a witness who owned this property from 1978 until 2005. Although others owned the property between that individual's sale of the property in 2005 and the present landlords' purchase of the property, the tenants testified that this proposed witness has maintained some contact with tenants in the building. They said that this individual could provide testimony regarding the collection history within the building along with comments regarding maintenance and safety within the building. I was not convinced by the tenants' explanation that evidence from this person who owned the building five years earlier had a bearing on the issues in dispute. I explained that it did not appear that this testimony was of relevance to the tenants' application. The hearing proceeded without this individual's oral testimony.

During the course of the hearing and after I asked the tenants for a list of witnesses they wished to call, the tenants asked that two former tenants (DB and DR) be permitted to testify. These former tenants were involved in an earlier dispute resolution proceeding. The tenants and the landlords provided considerable documentation in their evidence packages regarding that hearing, which appeared to have only limited relevance to the issues in dispute in this hearing. The tenants included statements prepared by these two former tenants in their evidence package. As the tenants were unable to demonstrate how the oral testimony of the two former tenants would add to my understanding of the issues in dispute or their written statements, the hearing proceeded without oral testimony from these two former tenants.

The landlords appeared at the hearing with two of their employees and an agent. I accepted the need to obtain evidence from one of their employees, the property manager who the landlords plan to relocate to the tenants' rental suite. The landlords did not provide sufficient explanation as to why it was necessary to obtain oral testimony from the other property manager attending the hearing. Although I did not allow him to provide direct testimony, I agreed to allow him to respond as necessary to questions raised by the tenants about the landlords' evidence where he had the most direct first-hand knowledge. The landlords also wished to present their agent, a former Vancouver Police Officer, as a witness. I limited this individual's participation as a witness to his testimony regarding his police experience regarding the locations of potential security issues surrounding buildings of this nature.

At the hearing, the landlords made an oral request for an Order of Possession if the tenants' application to cancel the notice to end tenancy were dismissed.

#### Issues(s) to be Decided

Are the tenants entitled to obtain cancellation of the landlords' notice to end tenancy? Are the landlords entitled to an Order of Possession? Are the tenants entitled to a monetary Order for loss of quiet enjoyment of their rental premises over the 26-month period since the present landlords have owned this building? Are the tenants entitled to an order requiring the landlords to comply with the *Act*? Are the tenants entitled to obtain recovery of their filing fees for this application?

#### Background and Evidence - Tenants' Application to Cancel Landlords' Notice to End Tenancy and Landlords' Oral Request for an Order of Possession

After purchasing this property, the landlords took possession in July 2008. After numerous dispute resolution proceedings over the first two years of the landlords' ownership of this property, the landlords' existing non-resident property manager (the property manager) testified that she contacted the landlord in August 2010 with a proposal to vacate her existing home in South Vancouver and relocate to an upper floor two-bedroom unit in this rental property where she could be a resident manager. After

considering their property manager's proposal, the landlords issued the tenants a 2 Month Notice to End Tenancy for Landlord Use of the Property on August 27, 2010. The landlords indicated that they needed the tenants to vacate the rental premises by October 31, 2010 to enable them to move their property manager into their rental unit.

The property manager provided undisputed written evidence of her September 22, 2010 letter to end tenancy to her existing landlords at her existing home. She indicated that she would be vacating the premises on or before October 31, 2010. The landlords entered written evidence and the property manager testified that she requires a large two-bedroom unit because she intends to use the rental premises for respite care for foster children. She testified that she and her roommate presently care for four foster children at their present rental location. She said that she intends to modify this arrangement and envisions no problems with obtaining permission to do so, as her present rental accommodations are essentially the same size. The landlords and the property manager also entered evidence that the property manager was involved in a personal incident in the past which makes it essential that she avoid living in main floor or ground level accommodations. She testified that she would not be comfortable living on a ground floor rental unit despite any number of safety devices.

The landlords testified that they recognize that they have been unable to provide the level of service and responsiveness to tenants at this building that they provide at other buildings where they have on-site resident property managers. The landlords said that the location of the tenants' rental unit would enable a resident property manager to keep a much closer watch on areas of the building, including a lane where problems frequently occur in downtown buildings of this type. They also testified that a resident property manager will facilitate easier interaction and communication regarding rent collection issues, security and general building maintenance. The landlords did not dispute the extensive documentation provided by the tenants documenting the tenants' claim that the landlords have been unresponsive in looking after problems they identify with the building. The landlords testified that they are trying to improve their service to tenants by placing a resident property manager on site.

The tenants submitted written evidence regarding their concern that the landlords are not acting in good faith in their notice to end tenancy. They alleged that the landlords' "true intent is to end all the tenancies that existed when they took ownership of the (building), in order to increase rents far beyond the annual regulated increases." They maintained that the landlords have "repeatedly shown their hostility toward (building) tenants in general, and toward (the male tenant) in particular, for resisting (the landlords') plans to end tenancies and to increase rents far beyond the annual regulated increases." They asserted that the landlords have "previously attempted to evict other tenants without cause, including one whom they perceived as leading the... tenants in resistance to the landlord's plans." They claimed that the landlords have repeatedly shown a lack of credibility and asserted that any reasonable person would conclude that the landlords' primary motive is to end their tenancy in bad faith.

The tenants entered written and oral evidence that the prime motivator was not the landlords' stated intention to provide better service to tenants and to the property through a resident property manager, but to continue the campaign to force tenants who are paying the present rents out of this building. The tenants maintained that the landlords selected this rental unit for their proposed resident manager's suite because the tenants, particularly the male tenant, are identified by the landlords as the prime opponents to the landlords' plans for this building. The tenants identified a number of rental suites, including Unit #2, another two-bedroom unit within the same building, where the landlord could place the resident manager's suite in preference to the tenants' rental unit. Some of these units suggested by the tenants were one-bedroom units and other units were in other nearby buildings owned by the landlord.

### Analysis

#### Tenants' Application to Cancel Landlords' Notice to End Tenancy and Landlords' Oral Request for an Order of Possession

The tenants brought into question the landlords' motive for seeking to end this tenancy and maintained that the landlords were acting in bad faith.

When the “good faith” intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do what the landlord indicates on the notice to end tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord's *primary* motive. In similar circumstances, the courts have held that there is an onus upon the landlord to prove an absence of bad faith arising out of dishonest purpose as opposed to placing upon the tenant the obligation to prove the existence of some element of bad faith. I have considered the alleged existence of a dishonest motive which could affect the credibility of the landlords' stated intention to occupy the tenants' rental premises. For that reason, I allowed the tenants to question the oral and written evidence presented by the landlords regarding the sincerity of their intentions and their motivations.

After reviewing and considering the written and oral evidence presented by the parties, I believe that the landlords are sincere in their intention to use the tenants' rental unit as a suite for their resident property manager. The landlords and their witnesses provided clear and reasonable evidence as to why they believe that their service to tenants of this building will improve by having a resident property manager on site. They noted that they have such managers in place at some of their other buildings and that they do not encounter the same level of tenant complaints at those buildings. I find the property manager's evidence compelling and clear as to why she approached the landlords with a proposal to become the resident property manager in this building. She provided clear answers and explanations as to why she needed a large two bedroom suite and her personal reasons for requiring a suite that is above grade level. Although the tenants proposed other units within the building and in nearby properties owned by the landlords, I am satisfied that these proposals would not accomplish the stated objectives of the landlord to provide improved and more timely service to tenants at this building in a way that meets the accommodation needs of the property manager. The landlords also submitted into evidence a copy of the property manager's written notice to her existing landlord to end her tenancy as of October 31, 2010.

I have carefully reviewed the submissions from both parties regarding the various applications for dispute resolution by tenants in this building and by the landlords. I recognize that there has been considerable history between the tenants in this building and the present landlords which raise questions for the tenants as to the landlords' motivation in this matter. I accept the tenants' assertions that the landlords may have motivations beyond those stated in their written and oral evidence in seeking an end to their tenancy. However, I believe the landlords' primary motive is the reason stated in the Notice to End Tenancy. I find the landlord has met the requirements of having acted in "good faith" in issuing the notice, and that the landlord intends in good faith to use the tenants' suite for a resident property manager's suite. I am satisfied by the sworn evidence provided by the landlords and their property manager that the landlords have demonstrated that there is an absence of bad faith arising out of dishonest purpose. However, even if an ulterior motive exists; I do not believe that an ulterior motive is the landlords' *primary* motive for ending this tenancy.

I find that the landlords properly served the tenants with the Notice to End Tenancy and that the landlords intend in good faith to use the rental unit as the resident property manager's suite. I dismiss the tenants' application to cancel the landlord's Notice to End Tenancy. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. In accordance with section 55(1) of the *Act*, I provide the landlord with a formal copy of an Order of Possession effective at one o'clock in the afternoon on October 31, 2010. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

#### Background and Evidence - Tenants' Application for a Monetary Order

The tenants have requested a \$5,000.00 monetary Order for loss of quiet enjoyment of their rental premises under section 28 of the *Act* for the past 26 months since the landlord obtained possession of this property. They maintained that they have been deprived of quiet enjoyment of their rental premises "because of the landlords' behaviour, in this and many other instances, which keeps us under a constant and

intimidating threat of eviction.” They calculated this amount for their loss of quiet enjoyment by multiplying half of both tenants’ hourly gross wage (i.e., \$30.00 per hour for each tenant) by 85 hours, the conservative estimate they provided for how much time they have devoted to the landlords’ attempts to evict them or raise their rent.

#### Analysis - Tenants’ Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

While I have given the tenants’ application for a monetary Order careful consideration, I find that they have provided insufficient evidence to award them a monetary Order. Both parties have availed themselves of the remedies allowed to them under the *Act*. I make no monetary Order to the tenants for their assertion that the landlords’ present initiative or previous dispute resolution hearings have been stressful for them.

#### Other Issues

I make no order requiring the landlords to take action to comply with the *Act* as I am not satisfied by the tenants’ evidence that there has been any lack of compliance with the *Act* by the landlords.

As the tenants have not been successful in their application, they shall bear their own costs of filing this application.

#### Conclusion

I dismiss the tenants’ application to cancel the landlords’ 2 Month Notice to End Tenancy for Landlord use of the Property. The landlords are provided with a formal copy of an Order of Possession effective at one o’clock in the afternoon on October 31,



2010. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the tenants' application for a monetary Order. I dismiss the tenants' application for an order requiring the landlords to comply with the *Act*. I dismiss the tenants' application for recovery of their filing fee from the landlords.

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*.