

## **DECISION**

**Dispute Codes** CNL, MNDC, FF

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for a monetary order for compensation in the amount of \$3,000.00 and for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the start of the hearing, I asked the landlord if there was any change in his position, from the date that the tenant had filed this application. The landlord stated that he intended to pursue his plan of allowing his daughter and her family to move into the rental unit while their home was undergoing major renovation. The landlord also requested that he be granted an order of possession, in the event that the notice to end tenancy was upheld.

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

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to have his family members move into the rental unit? Is the tenant entitled to compensation in the amount of \$3,000.00 and the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on November 15, 2006. The rental unit is a two level home. The landlord lives in a suite that is located above the garage of the rental unit.

Both parties agreed that at the time the tenancy started, the shower on the main floor of the unit was inoperative and the tenant agreed to rent the unit as such. The monthly rent is \$1,400.00 and does not include utilities.

The tenant filed applications for dispute resolution on two prior occasions. On January 19, 2010, the tenant was granted an order directing the landlord to fix the dishwasher. On May 06, 2010, the notices to end tenancy for non payment of rent and for landlord's use of property were set aside.

The landlord stated that his daughter and her husband have plans to carry out major renovations to their home which involves opening one side of the home and adding floor space to both levels. The landlord's daughter has a young child and needs to move out of the home by June 01, 2011. The landlord stated that some repair is required to the rental unit prior to his daughter moving in and therefore he served the tenant with a two month notice to end tenancy for landlord's use with an effective date of April 01, 2011.

The landlord's son in law testified at the hearing and confirmed that he had his application for a building permit submitted to his local municipal office and expected to have a building permit within the next two weeks. He confirmed that he planned to start the renovations on June 01, 2011 and needed to be out of his home prior to that date. He plans to move his family into the rental unit.

The tenant has alleged that the landlord is issuing the notice in bad faith, and has no family members that need to move in. The tenant also stated that the reason for the notice is that the landlord has a "personal vendetta" against him and is looking for higher rent.

The tenant has also made a claim for \$3,000.00 for the loss of use of the shower and the hole caused by the removal of two tiles during the installation of the dishwasher in March 2011. Initially the tenant stated that this amount included the excess utilities that he had paid during the tenancy and then later when asked for evidence of the alleged overpayment; the tenant changed his claim to exclude utilities. The tenant confirmed that he was making a claim for \$3,000.00 for the loss of use of the shower through his tenancy and the gaping hole left behind by the removal of two tiles in March 2010.

The tenant agreed that the shower was not in operation when he moved in. He also stated that he had agreed to accept the inoperative shower but only on a temporary basis and not for the whole duration of the tenancy. The tenancy is over four years old and the tenant has lived in the unit without this facility. The landlord pointed out that the tenant has the use of the shower on the upper level of the home.

The landlord agreed that he had removed two tiles to install the dishwasher and just did not get back to replacing them.

He stated that the two tiles were attached to the same wall that the inoperative shower was attached to and he decided that since the shower is not in use, it was not something that needed fixing.

### **Analysis**

Section 49(3) of the Act, pursuant to which the notice to end tenancy was issued, provides as follows:

- A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When the Tenant alleges bad faith on the part of the Landlord, the Landlord has an onus to prove they are acting in good faith. The landlord's witness who is also the landlord's son in law confirmed that he and his family will move into the rental unit while his own home was undergoing major renovations.

After having carefully reviewed the submissions of the parties, I am unable to find that the landlord is acting in bad faith and therefore I uphold the notice to end tenancy. During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant 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.

The tenant has applied for compensation for the loss of the use of the shower in the main floor washroom. Based on the testimony of both parties, I find that the shower was inoperative right from the start of the tenancy and the tenant agreed to rent the unit with the inoperative shower. The tenant made an application for an order for repairs in May 2010 but did not include an order to direct the landlord to repair the shower. Therefore the tenant did not lose the use of this facility because he never had the facility to start with.

Regarding the non replacement of the tiles, I find that it was the responsibility of the landlord to replace the tiles that he removed while installing the dishwasher. The landlord's reason for not doing so is that the shower was not in use. I find that even though the tenant did not use the shower; the landlord was required to repair the damage as it is unsightly, thereby reducing the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In this case I find that the tenant is entitled to nominal damages. The tiles were removed approximately one year ago and therefore I award the tenant a minimal award of \$100.00. The tenant may make a onetime deduction of \$100.00, off his next rent. Since the tenancy is ending, I will not order the landlord to fix the tiles.

Overall the tenant has established a claim of \$100.00 out of his claim for \$3,000.00. Since he has proven a minor portion of his claim he must therefore bear the cost of filing his application.

### **Conclusion and Order**

The Notice to End Tenancy is upheld and I grant the Landlord an order of possession effective on or before **1:00 p.m. on April 01, 2011**.

The tenant has established a claim of \$100.00 and may make a onetime deduction of this amount from his next rent. The remainder of the tenant's application is dismissed.

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: February 23, 2011.

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Residential Tenancy Branch