



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNR MNDC OLC ERP RP PSF RR FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for landlord's use, as well as for monetary compensation, a reduction in rent, orders for repairs and emergency repairs and an order that the landlord provide services or facilities required by law. Both tenants and two of the landlords participated in the teleconference hearing.

I determined that the issues of the notice to end tenancy and emergency repairs took precedence, and on that basis I therefore sever the remainder of the tenants' application and dismiss it with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Is the landlord entitled to an order of possession?
Should the landlord be ordered to do emergency repairs?

Background and Evidence

The tenancy began in September 2010, initially as a six-month fixed-term tenancy. On March 4, 2011 the landlord and tenants entered into a new month-to-month tenancy, with rent due on the fourth day of each month.

On July 2, 2011, the landlord served the tenants with a two month notice to end tenancy for landlord's use. The reason indicated on the notice for ending the tenancy was that the landlord or a close family member intends to occupy the rental unit. The effective date of the notice is September 3, 2011.

The evidence of the landlord in regard to the notice to end tenancy was as follows. The landlord had originally rented to the tenants on a temporary basis while the landlord was travelling. The tenants agreed to allow the landlord to store some of their

possessions on the property. The landlord believed that the intention of the tenants was to live in the rental property while they were looking for a house to buy.

In April 2011 the landlord was trying to sell the rental property, and they were concerned about the lack of maintenance of the property. The landlord decided that they would give the tenants one month's notice and then they would move back into the property and fix it up to sell it. However, the tenants refused to accept the one month notice and the landlord came to understand that they could not give a one-month notice to end the tenancy for landlord's use.

In May 2011 the landlord attempted to come to an agreement with the tenants either to end the tenancy by mutual agreement or by entering into a new tenancy agreement for a higher rent and a fixed term, but the tenants declined. The landlord got a really low offer on the property, which was because of the run-down condition of the property.

When the landlord served the tenants with the notice to end tenancy for landlord's use on July 2, 2011, the landlord intended to occupy the rental unit. On that basis, they arranged to have their daughter registered at the local high school, and they took preliminary steps to book movers for their move back to the rental property. In the hearing the landlord verbally requested an order of possession.

The tenants' response to the notice to end tenancy was as follows.

The tenants believe that the landlord served the notice to end tenancy because of the tenants' complaints about the property. The tenants make requests for repairs and nothing ever gets done. On May 13, 2011 the landlord asked for \$2200 in rent and a one-year lease. The tenants declined to sign a new lease. The landlord asked the tenants to sign a mutual agreement to end tenancy, but the tenants declined. The landlord later stated in an email that they had no intention of moving back in to the property. The landlord constantly goes from one thing to another. The tenants have been trying to work with the landlord to help sell the property.

The tenants' evidence regarding their request for emergency repairs was as follows.

- 1) One of the bedrooms does not have a window that opens, which leaves that bedroom with no exit in the case of a fire. The tenants have requested that the window be repaired, but the work has not been completed.
- 2) There are several dead standing trees on the property, one of which recently fell on the driveway. The tenants provided the landlord with information that the trees were an immediate risk, but the landlord has done nothing about it.

The landlord's response to the request for emergency repairs was as follows.

- 1) The landlord has hired a builder who is prepared to install the window as soon as he hears from the tenants. The landlord will contact the builder again and ensure that the window is installed.
- 2) The landlord never received notice from the tenants that there was a safety issue with the trees. The landlord will be on the property in two weeks and will look at the situation at that time.

Analysis

In considering all of the relevant evidence, I find as follows.

The notice to end tenancy is not valid. The landlord emphasized several times that their intention was to occupy the property in order to bring it back to a sellable state, and then sell the property. It is not necessary for a landlord to end a tenancy and occupy the property in order to do work on the property and sell it. In fact, a landlord may not end a tenancy to do work on the rental unit or property unless the nature of the work is such that vacant possession is required. Further, a landlord may not end a tenancy simply because the property has been sold; the purchasers must provide a letter indicating that they intend to occupy the property before the landlord can issue a notice to end tenancy. I therefore cancel the notice to end tenancy.

In regard to emergency repairs, I find it is not necessary to order the landlord to address the window installation, as the landlord is prepared to have the window installed as soon as the tenants make arrangements with the builder.

I accept the evidence of the tenants that the dead standing trees may pose an immediate risk. The landlord must immediately assess the potential risk of any trees that may fall on or near the house or driveway, and take steps to remove any trees that are determined to pose such a risk.

As the tenants' application was largely successful, they are entitled to recovery of their filing fee for the cost of their application.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The landlord is ordered to immediately assess the risk of trees that may fall on or near the house or driveway of the property, and act accordingly to remove any trees that do pose a safety hazard. If the landlord does not promptly address this issue, the tenants may be entitled to monetary compensation.

The tenants are entitled to recovery of their \$50 filing fee, which they may deduct from their next month's rent.

The remainder of the tenants' application is dismissed with leave to reapply.

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: August 15, 2011.

Residential Tenancy Branch