



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for landlord's use of property, money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

The tenants testified that on February 18, 2011 they were provided 2 months notice to end the tenancy for landlord's use of property; the notice as an effective end of tenancy date of April 30, 2011. The tenant stated that the notice indicates that the new owners are purchasing the property and will be occupying the rental unit when the sale is completed. The notice was provided to the tenants on behalf of the new property owner by their former landlord as a condition of sale.

The tenant stated that the new owners did not and never intended to occupy the rental unit occupy the rental unit as they had it demolished under permit. The tenant stated that 2 weeks after they vacated the rental unit the hydro to the property was cut and that as of August 2011 a demolition permit was in place. The tenant stated that as the new owner has not occupied the rental property for at least 6 months as outlined in the Act they are now entitled to 2 months rent compensation.

The landlord stated that they had fully intended to occupy the rental unit but that between February 18 and April 30, 2011 when the notice was served on the tenants, the former landlord, realty agents and bank appraiser were concerned that one of the tenants had become aggressive due to an emotional attachment with the property.

The landlord stated that the former landlord and realty agent refused to make arrangements for the purchasers to go back to the property because of their concerns with the tenant.

The landlord stated that it was suggested to them that they have an alarm system installed to ensure their safety when they moved in to the property as there were concerns that the tenant would retaliate.

The landlord also stated that it took longer than expected to sell their property and that the purchaser requested a closing date of October 2011. The landlord stated that with the concerns of the tenant's behaviour coupled with the late closing date, the decision was made to ensure the safety of their family and stay in their original property.

The landlord stated that they had always intended to demolish the rental property however that was something they had planned for a year later. The landlord stated that they had hoped that demolition of the property would help to sever the emotional attachment the tenant had to the property.

The tenant stated that the comments about one of them being upset was hearsay however the tenant did comment that both she and her husband had had an issue with having to vacate on the 2 month notice.

The landlord stated that they had never given the notice to the tenants with a malicious intent to have them removed from the property and that it was a combination of the circumstances that prevented them from residing in the rental unit as they had planned.

The tenant stated that they did not make an application to cancel the notice to end tenancy when it was issued to them as they were in the process of looking for a property to purchase.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to cancel a notice to end tenancy for landlord's use of property or for a monetary order for money owed or compensation due to damage or loss.

The tenancy came to an end April 30, 2011 therefore it is moot for the tenants to now request that the notice to end tenancy be set aside. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's claim for compensation I find that the landlords did act in good faith and that the tenant's were not provided with a notice to end tenancy for dishonest or ulterior motives.

The testimony of the tenant whereby the tenant states that that they had an issue with having to vacate in 2 months time combined with the former owner and realty agents

refusing to go back to the rental property because of the tenants behavior leads to establishment of the safety concerns of the landlord.

It is noted that the late closing date for the sale of their property afforded the landlords the opportunity to not have to reside in the rental property however I accept the landlord's testimony that they were concerned for the safety of their family and retaliation by the tenant had they occupied the rental unit. I also accept the landlord's testimony that they had truthfully intended on occupying the rental unit. Therefore this portion of the tenant's application is dismissed without leave to reapply.

Residential Tenancy Policy **Guideline 2. Good Faith Requirement** speaks to:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

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.

In regards to the tenants claim for reimbursement of procuring a BC Assessment document, section 72 of the *Act* addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Therefore this portion of the tenant's application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is dismissed in its entirety without 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: February 20, 2012

Residential Tenancy Branch