



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, O, and FF

Introduction

By application of January 30, 2013, the tenants seek to have set aside a Notice to End Tenancy for landlord use served in person January 23, 2013. The tenants also sought an order that the landlord provide them with an exclusive use garbage container rather than the shared use containers recently provided to them. In addition, the tenants seek to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

Was the Notice to End for landlord use issued in good faith and should it be upheld or set aside? Is the landlord obliged to provide the tenants with exclusive use garbage containers?

Background and Evidence

This tenancy has been underway since July 10, 2007 with a \$900 security deposit paid on June 15, 2010 and rent is currently \$1,860 per month.

While this application was made by the tenants, in applications that challenge a notice to end tenancy, the landlord is asked to lead evidence to support the reasons for ending the tenancy. In the case of a Notice to End Tenancy for landlord use, the landlord is required to substantiate that the notice was given in good faith and that there is no ulterior motive.

In the present matter, the landlord gave evidence that she has been living in Seattle because of her employment. While she has rented the Victoria home for the past 10 years, it has always been her intention to return to it when she retired.

She stated that she has retired in April 2012 and has been preparing for relocation to Victoria and has been visiting the city twice a month to spend time with her grandchildren. She gave evidence that she intends to occupy the rental unit as her primary residence, a use included in the reasons cited in the Notice to End Tenancy.

The landlord stated that she had always been candid with her tenants about her plans to reside in the rental unit when she retires.

The landlord submitted into evidence a letter from her daughter who had acted as her agent in creating the rental agreement with the present tenants. The letter states that when creating the rental agreement, she advised the tenants that she was unable to offer a long term tenancy because of her mother's intention to move into the rental unit with her husband when she retired.

The landlord also submitted a letter dated February 5, 2013 from a professional colleague of 10 years, also a former Victoria resident, who stated that the landlord had always said she would be returning to Victoria when she retired. That letter, and another dated February 6, 2013 verified the landlord's retirement.

The tenant, with assistance of her legal counsel challenged the good faith of the notice on the grounds it was the fourth or fifth notice to end tenancy in the past two years, the others for cause and unpaid rent having been set aside following hearings.

The issues included disputes over the downstairs tenants failing to clean up garbage strewn by animals, yard maintenance, pool maintenance, parking of the tenants' vehicle, repair issues, a non-compliant rent increase and encroachment of the tenants' right to quiet enjoyment by too frequent inspections, etc. As those issues have been fully documented in previous decisions and summarized in tabular form in my decision of December 10, 2012, rather than revisit all of them, I accepted the tenants' proposition that the troubled nature of the landlord/tenant relationship provided reasonable cause for them to doubt the bona fides of the present notice to end tenancy.

Counsel for the tenants also questioned the landlord's written submissions as including only a colleague, a friend and family member which might have been authoritatively supplemented by a mover's contract, evidence to indicate disposition of her Seattle residence, proof of her retirement date or other official documentation.

Counsel also noted that the male tenant is very seriously ill and currently is visited at home by a doctor, and that relocation would be detrimental to his health.

The tenant gave evidence that in December of 2012, the rental building was inspected by parties, one of whom was a known realtor, for the purpose of appraising the property.

The landlord stated that the realtor was her son-in-law who was acting as her agent for the exercise and while she might wish to consider selling the property in future, she has no immediate plans or intention to do so.

Counsel for the tenant also offered Supreme Court findings that, even if the landlord's primary intention is to move into the rental unit, a finding of secondary ulterior motive can be sufficient to reason to set aside the notice to end tenancy.

As to the issue of the garbage can, the landlord had submitted written evidence that she had obtained the larger of the new garbage bins available from the city along with the new green bin and had been assured by the city that they were sufficient for the two, two-party suites in the rental building.

She had also stated that the new bins are more secure against animal intrusion. While the tenant did not raise the issue again during the hearing, I would note that I know of no provision in the legislation that would require the landlord to provide cans for exclusive use.

Analysis

Section 49(3) of the *Residential Tenancy Act* provides that a landlord may serve a two-month Notice to End Tenancy if the landlord or a close family member intends in good faith to occupy the rental unit.

The interests of tenants are considered in such circumstances by the requirement under section 51(1) of the *Act* that tenants receiving notice under section 49 be given payment of the equivalent of one month's free rent.

Section 51(2) of *Act* provides further protection for tenants in allowing for an action if the landlord does not use the rental unit for the stated purpose starting within a reasonable time from the end of the tenancy and continuing for six months. If such were proven, the landlord may be made to pay the tenants an additional equivalent of two months' rent.

While I acknowledge the tenants' submission that the tenancy has been troubled, I am persuaded by the landlord's oral and written submissions, and referenced former decisions that recorded her intentions to do so, that the landlord did retire in April of 2012 and genuinely intends to move into the rental unit.

I am fully of the belief that her motive for doing so is to be close to her family and particularly her grandchildren.

Therefore, I declined to set the Notice to End Tenancy aside.

On hearing that determination, the landlord requested, and I find she is entitled to an Order of Possession to take effect at 1 p.m. on March 31, 2013 in support of the Notice to End Tenancy. Section 55(1) of the *Act* compels the issuance of such order on the landlord's oral request when a tenant's application to set aside a notice to end tenancy is dismissed or the notice is upheld.

As the application has not succeeded on its merits, I decline to award the filing fee.

Conclusion

The Notice to End Tenancy of is upheld and the landlord's copy of this decision is accompanied by an Order of Possession to take effect at 1 p.m. on March 31, 2013.

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 25, 2013

Residential Tenancy Branch

