



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yani C Jin Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL CNC DRI MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenants to cancel a two month notice to end tenancy for landlord’s use of property, to cancel a one month notice for cause, to dispute an additional rent increase, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to recover the filing fee, and “other” although details of “other” do not include additional areas of dispute under the Act but does provide background details of the application as a whole.

The tenants, the landlord, and counsel for the landlord attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed that they received evidence from the other party and had the opportunity to review the relevant evidence prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the tenants withdrew their application to cancel a one month notice for cause as the tenants stated that they had not been served with such a notice. As a result, the tenants’ request was granted.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the two month notice to end tenancy for landlord’s use of property (the “2 Month Notice”). I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined

during these proceeding. I will, therefore, only consider the tenants' request to set aside the 2 Month Notice and the tenants' application to recover the filing fee at this proceeding. The balance of the tenants' application is dismissed, **with leave to re-apply**.

Issue to be Decided

- Should the two month notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

A fixed term tenancy began on July 5, 2012 and reverts to a month to month tenancy after July 4, 2013. Monthly rent in the amount of \$1,180.00 which includes utilities (water, electricity, and heat) is due on the fifth day of each month. A security deposit of \$590.00 and a pet damage deposit of \$590.00 were paid by the tenants at the start of the tenancy. A copy of the tenancy agreement was submitted in evidence.

On page 4D of the tenants documentary evidence, an e-mail from the landlord indicates that the landlord will not agree to a month to month tenancy at the end of the fixed term. The tenancy agreement submitted in evidence does not indicate that the tenants must vacate at the end of the one year.

The tenants testified that at 4:20 p.m. on April 4, 2013 they advised the landlord by e-mail that it is against the law to remove utilities from a tenancy agreement that includes utilities. Nine minutes later at 4:29 p.m. the landlord responded to the tenants e-mail by writing that she regrets to give the tenants notice that her son would be moving into the rental unit so the landlord will require the rental unit back at the end of the lease.

The tenants stated that four days later, they were served with the 2 Month Notice on April 8, 2013. The tenants disputed the 2 Month Notice on April 8, 2013. The reason listed on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse."

The landlord testified that her son, who is twenty-four years old, currently lives with the landlord and would prefer to live at the rental unit. The landlord stated that her son plans to move into the rental unit in July, after the rental unit is re-painted.

The tenants are disputing that the landlord's son will be moving into the rental unit based on documentary evidence submitted by the tenants. The tenants referred to an April 18, 2013 letter from the landlord which reads in part:

“...I am writing you regarding the renew rental lease with my tenant...After considering, I have recognized that (the female tenant) needs to live in this unit. So I agree with (the female tenant's) of continue renew lease, and my son, will not move in this unit...”

In that April 18, 2013 letter, the landlord also indicates that she would like to renew the lease but to not include electricity in the renewed lease. The tenants' position is that the lease does not need to be renewed as it reverts to a month to month tenancy after the term of one year.

The landlord's response to the April 18, 2013 letter was that about a week after writing that letter, she had changed her mind due to the alleged behaviour of the male tenant when he served the tenants' evidence in person to the landlord. The landlord stated that the male tenant “harassed” her by buzzing her unit, pretending to be a courier and then stating that the tenants would not be leaving until they were ready to leave.

The male tenant vehemently disputed the landlord's testimony by stating that he was not pretending to be a courier and attended the front of her building to personally serve their evidence due to that day being the last day to serve evidence as per the timeline provided to them by the Residential Tenancy Branch. The male tenant testified that the landlord was not being truthful as the landlord came to the front door of the building where he served her with the tenants' evidence, and the landlord began to review the evidence in front of him. The male tenant stated that he advised the landlord that the tenants were advised by the residential tenancy office that the tenancy would revert to a month to month tenancy after the one year fixed term. Neither party had a witness present during the hearing to provide additional details regarding this exchange between the parties.

The tenants testified that they have been made aware of another tenant living in the building that was approached by the landlord to renew their lease and has requested that the other tenant pay utilities if he wants to continue to reside in the building. The tenants submitted an e-mail from that tenant which reads in part from the landlord “...I would like to ask if you are continuing renting the apartment....If so, the rent will be...and you need to pay heating, electricity, gas and water...”.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The 2 Month Notice issued on or about April 8, 2013 has an effective vacancy date of June 30, 2013 which automatically corrects under the *Act* to July 4, 2013. The tenants disputed the 2 Month Notice on April 8, 2013 which is within the fifteen day timeline provided for under the *Act* to dispute a 2 Month Notice.

When a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, that there is absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The landlord confirmed that she wrote the letter dated April 18, 2013 which indicates in part that her son would not be moving into the rental unit and that she wanted the tenants to sign a new tenancy agreement, effectively changing the terms of the tenancy to an agreement where electricity was not included in the monthly rent effective July 4, 2013. The landlord testified that she subsequently changed her mind when she felt the male tenant "harassed" her at her residence when serving the tenants' evidence. The male tenant disputed the landlord's evidence that he harassed the landlord and stated that he was serving their evidence within the required timelines and believes they were in the right, by applying to dispute the 2 Month Notice.

The tenants' stated that the landlord issued the 2 Month Notice in bad faith by sending the e-mail just nine minutes later on April 4, 2013 after the tenants had advised the landlord that it was against the law to change the terms of their tenancy agreement as the tenancy reverts to a month to month tenancy after the one year fixed term.

The tenancy agreement submitted in evidence does not indicate that the tenants must vacate at the end of the one year. Under the *Act*, such a tenancy agreement automatically reverts to a month to month tenancy when the parties have not clearly agreed in writing at the start of the tenancy that the tenancy will be ending after a fixed period of time requiring the tenants to vacate. After reviewing the tenancy agreement, I find that once the one year fixed term expires on July 4, 2013, the tenancy agreement automatically reverts to a month to month tenancy under the *Act*. Therefore, the tenants are correct that the landlord is unable to change the terms of the tenancy agreement such as requiring the tenants to pay for utilities as the utilities (water, electricity and heat) as these are currently included in the tenancy agreement.

During the hearing, the landlord confirmed that she requested that the tenants sign a new tenancy agreement where utilities were not included in the rent. The tenants refused to sign a new tenancy agreement based on the current tenancy agreement reverting to a month to month tenancy after the one year fixed term expires on July 4, 2013.

Given the above, **I find** the landlord did not issue the 2 Month Notice in good faith. The April 18, 2013 letter clearly indicates that the landlord would not have her son move into the rental unit if the tenants signed a new tenancy agreement which **did not include utilities**. This evidence supports that the landlord had an ulterior motive in issuing the 2 Month Notice which is further supported by the landlord's email sent nine minutes after the tenants e-mail on April 29, 2013 advising the landlord that it was against the law to change the terms of the tenancy agreement.

I find the landlord provided insufficient evidence to prove that the tenants harassed her. The tenants' version of the day on which the tenant served the landlord in person at the landlord's residence with the tenants' evidence is just as likely as the landlord's version. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the burden of proof is on the landlord to prove the 2 Month Notice is valid and was issued in good faith.

Finally, **I find** that requiring the tenants to agree to a new tenancy agreement where utilities are not included is an attempt to seek an unconscionable advantage. Therefore, based on the above, **I cancel the 2 Month Notice** as **I find** the 2 Month Notice was not issued in good faith. **I order** the tenancy to continue until ended in accordance with the *Act*.

As the tenants' application had merit, **I grant** the tenants' the recovery of their filing fee in the amount of **\$50.00**. **I authorize** the tenants to deduct that amount from a future month's rent on a one-time basis in the amount of **\$50.00** in full satisfaction of the recovery of their filing fee.

Conclusion

The 2 Month Notice issued by the landlord is cancelled.

I authorize the tenants to deduct \$50.00 from a future month's rent in full satisfaction of the recovery of their filing fee as their application had merit.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 08, 2013

Residential Tenancy Branch