



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary order. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as compensation pursuant to section 51 of the *Act*?

Background and Evidence

The rental property is a house in Vancouver. The tenants moved into the rental property on February 15, 2012. On October 27, 2012 the landlord served the tenants with a two month Notice to End Tenancy for landlord's use. The stated ground for the Notice was that: "A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares. The Notice to End Tenancy required the tenants to move out of the rental unit on December 31, 2012. The tenants filed an application to dispute the Notice to End Tenancy, but they abandoned the application and it was dismissed with leave to reapply. The tenants moved out on January 1, 2013. They received one month's free rent and their security deposit was returned in full at the end of the tenancy.

The tenants filed this application for dispute resolution on February 13, 2013 after they learned that the landlord had demolished the rental property and began construction of a new house. The tenant said that the landlord has not used the property for the purpose stated in the Notice to End Tenancy and therefore the tenants are entitled to compensation equivalent to double the monthly rent pursuant to section 51 (2) of the *Residential Tenancy Act*.

The landlord's representative testified that the tenancy began in February 2012. When the tenancy began the landlord's representative told the tenants that the tenancy would not be a long-term tenancy because the landlord planned to demolish the house and had the permits in hand to do so, but he was waiting for the appropriate time to begin construction of a new house, taking into account the economy and the pending repeal of the harmonized sales tax.

The landlord's representative testified that his children suggested that they would like to live in the house for a short period until it was torn down and, based on their request, the landlord gave the tenants a two month Notice to End Tenancy. The landlord said that when his children inspected the vacant house they did not want to move in unless some expensive renovations were made first. Because the landlord was not prepared to inject money into renovations to a house that would soon be demolished and because his children would not move in unless extensive work was done, he went ahead with his plan to raze the house and construct a new one. He said that the work proceeded immediately because the landlord had all the necessary permits for the demolition and the new construction before he gave the tenants the Notice to End Tenancy on October 27, 2012.

At the hearing the tenant acknowledged that the landlord had told them at the beginning of the tenancy that the house was to be demolished and it would not be a long term tenancy. The tenant took the position that although the landlord may have been in a position in October to give a Notice to End Tenancy because he intended to demolish the house, there was a technical breach of the Act and the tenants are entitled to the compensation provided under section 51(2) of the Act. The tenant acknowledged that the landlord derived no benefit by giving one form of two month Notice instead of the other form.

Analysis

The Residential Tenancy Policy Guideline #2 addresses the good faith requirement when ending a tenancy; it provides as follows:

This policy guideline addresses demonstration of good faith when a landlord ends a tenancy for landlord's use of property.

LEGISLATIVE FRAMEWORK

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act allow a landlord to end a tenancy if the landlord intends in good faith to:

- provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;
- move in themselves, or allow a close family member to move into the unit;
- sell the unit and after all the conditions of sale are removed, the purchaser requests the seller issue the Notice to End Tenancy because they or a close family member intend to move in; or
- substantially renovate or demolish the rental unit, with all required permits and approvals, or convert it to another use, including a caretaker's unit, or convert it to a strata unit.

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The evidence shows that the Notice to End Tenancy was given honestly and without any ulterior motive. The landlord warned the tenants at the outset of the tenancy that he was going to demolish the house soon. He had all the necessary permits to do so on October 27, 2012 when he gave the Notice to End Tenancy; he reaped no benefit

and obtained no advantage by giving the Notice to End for landlord's use instead of a Notice based on his intention to demolish the rental property.

The compensation called for in section 51 is intended to serve as a penalty imposed when a landlord does not act in good faith and is later found to have ended the tenancy and failed to use the property for the stated purpose, or for some other purpose that would not have entitled him to end the tenancy at the time the Notice was given. A typical example that would attract compensation is the situation where a landlord gives a Notice to End Tenancy for landlord's use and instead of moving into the rental property, he rents the property for a higher rent than he was receiving from the former tenants. Here the tenants were on notice from the outset of the tenancy that the house was slated for demolition. The Notice was given based on the landlord's honest belief at the time it was given; once given it could not be withdrawn. Because the landlord did not act out of any ulterior motive, because he was in a position to give a Notice to End Tenancy for the actual reason for the eviction at the date the Notice was given and because the tenants were told of the impending demolition at the outset of the tenancy, I find that it would be unconscionable and unjust to award compensation to the tenants. The tenants' application is therefore dismissed 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: June 3, 2013, 2013

Residential Tenancy Branch