



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNL, FF

For the landlords – OPL, OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel the Two Month Notice to End Tenancy for landlords' use of the property and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for landlords use of the property; for an Order of Possession for cause; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing it was established that the landlords had not served the tenants with a One Month Notice to End Tenancy for cause. Therefore the landlords withdraw their application for an Order of Possession for cause.

The tenants and two of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the Two Month Notice to End Tenancy cancelled?

- Are the landlords entitled to an Order of Possession for landlords' use of the property?

Background and Evidence

The parties agree that this tenancy started on September 01, 2012 for a fixed term which ended on August 31, 2013. At present this is a month to month tenancy. Rent for this unit is \$1,450.00 per month and is due on the 31st day of each month.

The landlord CM testifies that the tenants were served with a Two Month Notice to End Tenancy on July 17, 2013 in person. This Notice has an effective date of September 31, 2013. Originally the landlord testifies a different Notice was served upon the tenants however the landlord withdrew that Notice as it was not a legal notice in British Columbia. The landlord testifies that the Notice informed the tenants that the rental unit will be occupied by the landlord or the landlord spouse or a close family member of the landlord or the landlord's spouse.

The landlord CM testifies that she is a part owner of the rental unit with her husband and two other landlords. The landlords entered into a private agreement to have a 50 percent share of the rental unit in November, 2011. A copy of this agreement between the owners/landlords has been provided in evidence. The landlord testifies that once money exchanged hands then the agreement became binding. The landlord agrees that the agreement has not been notarized but testifies that the landlord's lawyer informed the landlord CM that there was no reason that this agreement needs to be notarized. CM testifies that she is separating from her husband, one of the other part owners and landlords, and intends to occupy the rental unit herself and renovate the basement into a separate unit and rent that unit out. The landlord testifies that even if this is not possible then the landlord still intends to purchase the rental unit from the other three owners and will live in the unit herself. The landlord testifies that they are in the process of drawing up a purchase agreement.

The tenants dispute the landlords claim. The tenants testify that they challenge the landlords evidence as the tenants have determined that this landlord CM or her husband MM are not on the landlord title deeds and therefore they are not owners of the property. The owners of the property are the landlords BO and MO. A copy of the land title documents have been provided in evidence by the tenants. The tenants' testify that although all four landlords are named on the tenancy agreement and the Two Month Notice they have always paid their rent to BO and MO.

The tenants testify that the landlord CM at first served the tenants with an Ontario Two Month Notice and explained that she could not afford to live in the home on her own. Later CM bought round some prospective tenants who viewed the rental unit's exterior and peered through windows without the tenants' permission and without proper Notice. The tenants question the landlords' motive in trying to evict the tenants as the tenants testify that the landlord CM cannot afford the rental unit and informed the tenants that she could only afford \$400.00 to \$500.00 per month. The tenants testify that CM said if the tenants could find CM somewhere else to live for that amount of rent then she would not move into the rental unit.

The tenants also question the landlords' legality of the agreement provided in the landlords' evidence concerning the ownership of the rental unit. The tenants' testify that this does not appear to be a legal document, it is more in line with an invoice then an ownership document and if it was drawn up in 2011 then the landlords had two years to register this joint ownership with the land title office. The tenants' testify that as this landlord CM only has a 25 percent share of the property according to the agreement between the landlords she cannot exercise her right as an owner/landlord.

The tenants ask the landlord CM if CM has applied for any permits to renovate the basement. CM responds that she has not yet applied for permits as she does not yet have possession of the rental unit. The tenants ask CM if she only has \$400.00 to \$500.00 per month. CM responds that this is not true and does not recall having a conversation with the tenants about that. The tenants ask CM why their interest in the

property has not been registered on the title deeds. CM responds that that would mean they would have to purchase the property outright. The tenants inform CM that she could register a part interest of a property. The tenants also ask CM about the other parts of the agreement as only page one has been provided in evidence. CM responds that the ownership is clearly documented on page one of the invoice which is signed by all four owners. The other pages are irrelevant as they are just balance sheets for the renovations. The tenants respond that the other pages are relevant as the cheque which exchanged hands could be for renovations and not part ownership. CM responds that the first page of the invoice shows that the cheque makes the agreement valid.

The landlord BO joins the hearing and testifies that an agreement was drawn up for all four landlords to have equal share of the property. CM and MM are silent partners and the renovations of the property were done together. The amount paid by CM and MM was for the balance and gave them 50 percent ownership of the property. BO testifies that their lawyer advised them that this document did not need to be notarized.

The landlord BO testifies that CM intends to buy the other three owners out of the property by the end of September and a purchase agreement is being finalized. This should be enough to show that CM is purchasing the property. (No purchase agreement has been provided in evidence).

The tenants testify that until a purchase agreement is in place and finalized with all conditions removed then the landlord CM has not established ownership of the property that would entitle CM to move into the property and evict the tenants for the reason given on the Notice.

The landlord CM testifies that regardless of the future of the property CM does intend to live in the rental unit and as a landlord is entitled to do so.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Any interest in property in British Columbia must be registered at the land title office. Only landlords on the title have the right to move into the property as the other two landlords do not meet the definition of landlords under s. 49 of the *Act* which states

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest,

Even if the other two landlords were on the land title documents they would still not meet the definition of landlord as they have not held a reversionary interest in the rental unit for a period exceeding three years and this particular landlord CM only holds a 25 percent interest in the property.

Consequently, the tenants' application is upheld as the landlord who intends to move into the rental unit does not meet the definition of landlord under s. 49 of the *Act*.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated July 17, 2013, is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants

are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlords.

The landlords' 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: September 16, 2013

Residential Tenancy Branch

