



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, FF, O

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing, I reviewed the tenants' application with them and noted that they had made a monetary claim for compensation for damage or loss under the Act. The tenants provided no documentary explanation either in their application or supplementary evidence explaining why they were seeking this compensation and further failed to provide a breakdown of what the \$3,600.00 claim represented.

It is a fundamental principle of administrative justice that the respondents have notice of the claim made against them so they can respond to that claim. I found that as the tenants did not provide details about their claim or an indication of what the amount claimed represented, the respondents could not prepare a response. At the hearing, I advised the tenants that I would not hear this claim as the respondents had no opportunity to prepare a meaningful response and I dismissed the claim with leave to reapply. The hearing proceeded to address solely the issue of the notice to end tenancy.

Issues to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenancy began in September 2007. The rental unit is located in the basement of a home in which the landlords occupy the upper floor. The parties agreed that on September 12, the tenants were served with a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The notice states that the rental unit will be

occupied by the landlord or the landlord's spouse or close family member. The tenants applied to dispute the notice on September 23, 2013.

On June 18, 2013, a hearing was held to address an application by the tenants for an order setting aside 2 notices to end tenancy, an order compelling the landlord to perform repairs and an order regarding an illegal rent increase. The landlord filed a cross-application. The landlord did not participate in the hearing and the notices to end tenancy, one of which was a notice identical to the notice at issue in the present hearing, were set aside. The landlord was also ordered to perform repairs and the tenants were granted a rent abatement until the repairs were completed and the Arbitrator found that the purported rent increase was invalid.

The landlords testified that they wish to end the tenancy because their 3 children, all over the age of 20, need privacy. They stated that they have a living room and family room in their living area, but when their children have friends over, they don't have a private area to spend time with their friends. Further, the female landlord testified that when her children forget their keys, they wake everyone up late at night because they can't get into the house and she worries about them when they are out late.

The tenants alleged that the landlords are trying to evict them because they have refused to accept illegal rent increases, they have refused to change their tenancy agreement to include a responsibility to pay for utilities, and they have made repeated yet fruitless requests for the landlord to perform repairs and address a mould issue in the unit. The tenants provided documentary evidence showing that in August 2012 they gave their landlord a written request to perform repairs. Immediately after having given the landlord this request, they were served with a one month notice to end tenancy for cause on which the landlord wrote "family will live in basement". The tenants made a further written request for repairs in January 2013. In May 2013, the tenants received a letter advising that rent would be increased and that the tenants would thereafter be responsible to pay for a portion of the utilities. The tenants advised the landlords that they had to follow the guidelines under the Residential Tenancy Act in order to raise the rent and the following day, they were served with the first 2 month notice to end tenancy for landlord's use of property. This is one of the notices which was the subject of the June 18 hearing.

The tenants' position is that the landlords have not served the notice to end tenancy in good faith.

In addition to seeking an order setting aside the Notice, the tenants requested that they recover the \$50.00 filing fee paid to bring their application.

Analysis

The Notice in question is given under section 49 of the Act, which provides as follows:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Unlike other notices to end tenancy, a notice given under section 49 of the Act requires the landlord to act in good faith. The landlord, therefore bears the burden of proving not only that they have grounds to end the tenancy, but that they are acting in good faith.

Residential Tenancy Policy Guideline #2 provides in part as follows:

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 ...

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 that they do not have an ulterior motive for ending the tenancy.

I am satisfied that the landlords intend that their children will live in the rental unit, but the preponderance of the evidence leads me to believe that the landlords have an ulterior motive in ending the tenancy.

The evidence clearly shows that the landlords made no attempt to end the tenancy until the tenants made a request for repairs in August 2012. The fact that the first notice was served on the same day indicates to me that it was retaliatory. The first notice was invalid as the correct form was not used and is not the notice which is before me, but it is the first indication of the landlord's desire to end the tenancy and the fact that it was served on the heels of the repair request cannot be ignored.

The second notice to end tenancy, which was the first 2 month notice to end tenancy served on the correct form, was served immediately after the tenants refused to accept an illegal rent increase. Again, the fact that it was served immediately after the tenants raised a contentious issue, leads me to believe that the landlords wish to end the tenancy as a retaliation for requests made by the tenants.

I find that the evidence shows that the landlords are not acting in good faith and are acting with an ulterior motive. I therefore find that the Notice cannot be effective to end the tenancy and I order that it be set aside and of no force or effect. As a result, the tenancy will continue.

As the tenants have been successful in their application, I find that they should recover the \$50.00 filing fee. The tenants may deduct \$50.00 from a future rental payment.

Conclusion

The notice to end tenancy is set aside. The tenants may deduct \$50.00 from a future rental payment. The monetary claim is dismissed with 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: November 04, 2013

Residential Tenancy Branch

