



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for the landlords' use of property.

One of the named tenants and both landlords attended the conference call hearing, however only the tenant and one of the landlords gave affirmed testimony. The tenant also provided evidentiary material to the Residential Tenancy Branch and to the landlords prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the notice to end tenancy should be cancelled?

Background and Evidence

The landlord testified that this tenancy began sometime in August, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$674.07 is currently payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$325.00, which is still held in trust by the landlords, and no pet damage deposit was paid.

The landlord further testified that the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on January 22, 2014 and sent it to the tenant by regular mail on January 23, 2014. The parties had a conversation wherein the tenant was advised that the notice had been mailed, and another conversation wherein the tenant told the landlord that it hadn't been received. The landlord sent another copy of the

same notice again to the tenant by regular mail on February 14, 2014, and the tenant ultimately agreed that it had been received. A copy of the notice has been provided for this hearing, and it is dated January 22, 2014 and contains an expected date of vacancy of April 1, 2014. The reason for issuing the notice states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The landlord further testified that the building requires repairs and renovations so the landlords can sell it or re-rent it for more rent, but will likely sell it once the renovations and repairs are completed. The tenant had an inspector inspect the rental unit, and a list was provided to the landlord of issues noticed in that inspection:

- Basement bathroom has rot somewhere;
- Basement leakage and condensation;
- Rot and worn seals in windows;
- Rot in fascia;
- Drainage problems in the back yard;
- Inside finishing needs lots of work;
- Hot water tank needs replacing;
- Furnace needs replacing;
- Sliding door leaks air;
- Front and back doors freeze shut and don't fit right;
- Furnace ducts need cleaning;
- Fridge and stove won't last much longer.

The landlords do not necessarily agree with the report, and the landlord testified that the landlords won't be doing anything about the drainage problems in the back yard, nor will the hot water tank or furnace be replaced. The landlords have identified that the entire main floor of the rental unit needs paint, flooring, baseboards and maybe countertops. The landlord stated that the rental unit needs to be vacant to complete the work because the landlords reside in a different city, will be completing the work themselves, and want to stay in the rental unit while doing it. They may also make some minor decisions as they go along. There are no structural repairs planned, so no permits are required. He also testified that there may be issues with the attic, but doesn't know. It will take 3 to 6 weeks to finish the work, and staying in a hotel during that time would be cost prohibitive to the landlords.

The landlord also testified that the tenants were given a Notice of Rent Increase which increased the rent by \$80.00 per month and believed it to be legal and believed that if a tenant disputed the notice, it would be determined at arbitration. Once the landlords

discovered that was not the case and that there is a limit by law on the amount of the increase, the landlords then issued the notice to end tenancy.

The landlord testified that the notice to end tenancy was sent the first time on January 23, 2014 by regular mail, and according to the legislation is deemed to have been served 3 days later because it was placed in the tenant's mailbox. The landlords request that I find that the notice was received 3 days after that, not 3 days after it was sent the second time so as to not alter the effective date of vacancy. The landlord also testified that in speaking with the tenants prior to the issuance of the notice to end tenancy, the landlords were under the impression that the tenants were going to move out anyway. The notice to end tenancy was not a surprise, and the landlords want vacant possession by the effective date of the notice to get the repairs completed and capture the market for the spring.

The tenant testified that the notice to end tenancy was received by the tenant on the 18th or 19th of February, 2014 and the application for dispute resolution was filed on February 26, 2014.

The tenant also testified that the landlords had advised the tenant that the repairs they intended to complete are interior painting and replacing the floors. The tenant does not need to vacate the rental unit for those repairs. The tenant told the landlord that furniture could be covered and some furniture could be moved to the basement so it wouldn't be in the way. Also, the list provided by the inspector was not a request by the tenant to the landlords to complete all of those repairs or replacements and the tenant does not expect it. The inspector was hired because the tenant had considered purchasing the rental unit. The tenant offered the landlords to stay as guests in her home during the repairs, but the landlords declined that offer.

When the landlords discovered they couldn't raise the rent by \$80.00 per month, they decided to issue a notice to end tenancy.

The tenant does not want to move, but has been looking for a place to move to. Most apartments are not wheel-chair friendly, a requirement for the tenant and this rental unit has a ramp.

Analysis

Firstly, the landlord testified that the effective date of vacancy stated in the notice is correct because the landlord sent it to the tenant by regular mail on January 23, 2014 and placing it in the mail box constitutes deemed service 3 days later. The *Residential Tenancy Act* permits a landlord to serve a notice to end tenancy by personally placing it in the tenant's mailbox or other conspicuous place, and then it is deemed served 3 days later. However, the *Act* states that documents sent by regular mail or registered mail are deemed to have been received 5 days later. The landlord was told that the tenant didn't receive it so the landlord sent it again on February 14, 2014, again by regular mail, and the tenant subsequently received it. I find it peculiar that the tenant would receive it the second time it was mailed and not the first time. The landlord has no evidence of when it was mailed the first time or the second time, or that it was addressed to the correct address of the tenant. That is the danger of not sending documents by registered mail. The tenant testified that it was received on February 18 or 19, 2014.

The *Act* states that a tenant who disputes the notice must file the application for dispute resolution within 15 days of the date the notice is received. If I were to accept that the tenant physically received it on February 18, 2014, the tenant would have until March 5, 2014 to dispute the notice, and if I found that it was received on the 19th of February, March 6, 2014 would be the deadline. I find that the dates, whether the 18th or 19th are consistent with mailing it on February 14, 2014 as the landlord testified, being 4 or 5 days after mailing it. In the absence of any proof of either mailing, I find that the notice to end tenancy was served on February 14, 2014, is deemed to have been received on February 19, 2014, and the tenant has filed the application for dispute resolution within the time required under the *Act*.

The *Residential Tenancy Act* permits a landlord to issue a notice to end tenancy if the landlord intends to demolish or repair a rental unit in a manner that requires the rental unit to be vacant. The *Act* also permits a landlord to issue the notice if the landlord intends to live in the rental unit, but the landlord would be required to state that in the notice to end tenancy and would be obligated to reside in the rental unit for at least 6 months. A landlord is also permitted under the *Act* to sell a rental unit, but cannot issue a notice to end tenancy until all conditions of the sale have been satisfied and the purchaser asks for vacant possession in writing. In this case, the landlords want to end the tenancy so they can move in, make minor repairs, paint and lay new floors and then sell the rental unit or re-rent at a higher rent, and want to take advantage of the market.

The onus in this case is on the landlords to prove that the rental unit must be vacant while it's being painted, floors being replaced and perhaps counters. In order to be successful in an attempt to have the disputed notice to end tenancy upheld, the renovations and repairs must be significant enough that the rental unit must be vacated. A landlord cannot require a tenant to move out for a fishing expedition – i.e. to see if anymore significant work needs to be done, or so that the landlord can move in to paint and make minor repairs because staying in a hotel is cost prohibitive. Further, the tenant testified that furniture can be covered or moved to the basement and I find that reasonable. I also find that the landlords have issued the notice to end tenancy because they were unsuccessful in increasing the rent by \$80.00 per month and wish to increase rent or sell the rental unit and that new paint and new floors will assist. I find that the landlords have not met the test.

In the circumstances, I cannot find that the repairs and renovations planned are significant enough to warrant ending the tenancy. The landlords are free to make the repairs while the rental unit is tenanted in accordance with the *Act*.

The notice to end tenancy is hereby cancelled and the tenancy will continue.

Conclusion

For the reasons set out above, the notice to end tenancy for landlord's use of property issued on January 22, 2014 is hereby cancelled and the tenancy continues.

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: March 12, 2014

Residential Tenancy Branch

