



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, OLC, FF

Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution for an Order canceling two Notices to End Tenancy, one issued for cause and one for the Landlord's use of the rental property, as well as an Order that the Landlord Comply with the Act, regulation or tenancy agreement and to recover the filing fee.

A.M., the Landlord, appeared as did C.G., agent for the Landlord, K.H., property manager for the Landlord, and M.M., the proposed resident manager. The Tenant, A.F., appeared on his own behalf and as agent for E.S. S.T. also appeared as advocate for both tenants.

Both parties appeared, 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.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

Preliminary Matters

At the commencement of the September 16, 2014 hearing, the Tenants' advocate, S.T., confirmed that the Landlord had, on the day before the hearing, September 15, 2014, rescinded the 1 Month Notice to End Tenancy for Cause, (namely a breach of a material term) issued August 18, 2014 (the "1 Month Notice").

Accordingly, the Landlord sought to proceed on the 2 Month Notice to End Tenancy for Landlord's Use, which was signed by the Landlord's Agent, K.H., and issued August 22, 2014 (the "2 Month Notice").

As another preliminary matter, the Landlord's Agent, K.H., was added as a responded by the Tenants by way of a Schedule of Parties. S.T. confirmed that this was done as a B.C. Companies Summary confirmed that K.H. was listed a director.

C.G. confirmed that K.H. is no longer a director of the Corporate Landlord, and had ceased to be a director two weeks prior to the September 16, 2014 hearing. According to C.G., K.H. was now an employee who would be giving evidence. As I was not provided with any evidence of the change in directors, I make no findings in this regard.

Issue to be Decided

Should the 2 Month Notice be cancelled?

Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement signed August 3, 2010. The Tenancy began on September 1, 2010 and was to continue for a period of one year, after which it continued on a month to month basis.

C.G. presented the Landlord's case. She stated that the rental property was purchased by the Landlord on August 5, 2014. The building is 60 years old and has 23 rental units. She submitted that for many years the rental building had a resident caretaker and that currently a resident caretaker is necessary. The Landlord also provided in evidence a letter from a Building Inspector who wrote that the "building would be best served by having a resident caretaker". She submitted that the Notice to End Tenancy was issued for the sole purpose of ensuring a resident caretaker could live in the rental unit.

C.G. submitted that the proposed resident caretaker, M.M., had previously worked for the company, was a "handyman" and was suitably qualified for the job. According to C.G., M.M. accepted the position as care taker on August 22, 2014. Introduced in evidence was a copy of the Resident Caretaker Agreement between M.M. and the Landlord also signed on August 22, 2014.

C.G. conceded that the Tenants were alleging that the Landlord was not acting in good faith, and that the basis of this allegation was the number of notices issued by the Landlord since purchasing the property.

The following dates are relevant to the issues before me.

August 11, 2014	The Landlord issued a "Tenant Notice" to the Tenants wherein the Landlord requests that they sign a new lease, and provide proof of insurance (pursuant to section 29 of the current tenancy agreement) within three business days.
August 12, 2014	The Landlord issued a "Tenant Notice" to the Tenants wherein the Landlord requests that they sign a new lease and informing the Tenants that bike storage would longer be permitted in the laundry area and any storage outside the individual storage lockers will be treated as a lease violation.
August 14, 2014	<p>The Landlord issued a Notice of Entry for Routine building/suite inspection</p> <p>Note: the Tenants wrote back on August 14, 2014 and indicate that a suite inspection was already conducted within the past month for measurement purposes.</p> <p>In evidence was also a letter from S.J., another occupant of the rental building, who confirmed that a site inspection had been conducted by K.H. on August 8, 2014.</p>
August 14, 2014	The Landlord issued a 1 Month Notice to End Tenancy for Cause (breach of a material term—Tenant failing to provide proof of insurance)
August 15, 2014	The Landlord issued a "Tenant Notice--Flooring" to the Tenants wherein the Landlord requested that the Tenants sign a new lease and attend to carpeting all traffic areas that were previously bare by August 25, 2014.
August 15, 2014	<p>A.M. and K.H. entered the rental building to conduct meetings with other tenants, and to post other notices.</p> <p>As A.M. and K.H. moved about the building, the Tenants followed them.</p>

	<p>A.F. testified that he did so as he was worried about the Landlord posting notices on other occupants' doors with unreasonable deadlines for compliance.</p> <p>Introduced in evidence were letters from other occupants of the rental building, namely the occupant in unit #9, D.D., S.J., S.D., and F.Z., who all wrote that they were appreciative of the Tenants' assistance on August 15, 2014 as they feared A.M. and K.H. would enter their rental units without their consent or post notices while the other occupants were otherwise not at the rental building.</p> <p>The Landlord described the Tenants' behavior as confrontational and intimidating.</p> <p>As the Landlord confirmed they were not proceeding on the 1 Month Notice, I make no findings with respect to Tenants' behavior that day.</p>
August 15, 2014	<p>K.H. emailed A.F. and attached a draft tenancy agreement.</p> <p>Notably, this tenancy agreement was for a fixed term (although that date is left blank) which also provides that at the end of the term the tenant must move out of the rental unit. The Tenants refused to sign the new agreement.</p>
August 16, 2014	<p>The Tenants provided proof of home insurance by way of a letter from their bank.</p>
August 16, 2014	<p>The Landlord issued a letter from K.H. to Tenants wherein K.H. writes:</p> <p>"Any stress you are experiencing with respect to the notices we have sent you is most likely a reflection of your non-compliance with your lease".</p> <p>No such evidence of such alleged non-compliance is provided.</p>
August 18, 2014	<p>The Landlord issued a 1 Month Notice to End Tenancy for Cause (breach of material term—Tenants' behavior on August 15, 2014)</p>
August 19, 2014	<p>The Landlord issues a "Notice of Pending Application for Additional Rent Increase" to the Tenants wherein the Landlord writes:</p>

	<p>“The landlord is applying for an order which will result in an increase in your monthly rent up to: <u>\$1,516.00 per month.</u>”</p> <p>(Reproduced as written)</p>
August 19, 2014	A.M. wrote a letter to the Tenants about their actions on August 15, 2014, alleging it was threatening and intimidating, and writes that the Tenants have violated their lease agreement and the Landlord is proceeding to end their tenancy as a result of this “material term”.
August 21, 2014	The Landlord issued a Notice of Rent Increase—Residential Rental Units wherein the Landlord communicates they wish to increase the Tenants rent from \$1,175.00 to \$1,200.85 (a \$25.85 increase).
August 22, 2014	The Landlord issued the 2 Month Notice
August 22, 2014	M.M. accepts the position as resident caretaker and signs the Resident Caretaker Agreement.

The Landlord conceded that 11 Notices to End Tenancy had been issued since they purchased the property on August 5, 2014. The rental building comprises of 23 units; according to the Landlord, three of the notices related to the subject Tenants, and the other eight related to separate occupants.

The Tenants submitted that unit 30 and unit B had previously been occupied by the manager and owner. The Landlord submits that Unit 30, is the penthouse and it is not economically viable to have the resident caretaker reside in Unit 30. As well, the Landlord stated that unit B was too small and located on the first floor, which was not acceptable to M.M. There is no evidence that M.M. discussed Unit 30 with the Landlord.

The Landlord filed written submissions wherein at paragraph 2(c)(ii) the Landlord writes “Unit B is also already leased for September 1st”. Introduced in evidence was a copy of the lease for Unit B.

The Landlord submitted evidence of the rental building floor plan. The subject unit, #29 is 705 square feet. Three other units in the building are of the same size. Four other units are between 679 and 680 square feet. Unit 30 is 1125 square foot penthouse.

The Landlord submitted that unit 30 was not viable as a caretaker unit. Unit B is 669 square feet, is located in the basement and according to the Landlord was “already leased”.

Also introduced in evidence was a letter from the occupants of unit 27 indicating their desire to vacate the unit by September 30, 2014; unit 27 is 449 square feet.

The Tenants submitted in evidence two internet ads for rental of units within the rental building. Both were advertised as fully furnished. The one bedroom unit was advertised as 670 square feet for \$1,600.00. The two bedroom unit was advertised as 1,125 square feet for \$2,300.00. Both units were advertised as being available September 1, 2014.

Introduced in evidence by the Landlord was a copy of the Residential Tenancy Agreement for unit B which was signed on August 21, 2014. Also introduced in evidence by the Landlord was a copy of the Residential Tenancy Agreement for unit 30 which was signed on August 22, 2014. It is noteworthy that both units were rented out either the day of, or the day before M.M. signed the Resident Caretaker Agreement.

The Tenant also introduced in evidence a copy of the listing for the rental building. Notably, the description of the building indicates the building has a bike storage area. Also included in this listing is a \$6,000.00 expense for a caretaker. Units 30 and B are noted as being occupied by the manager and the owner.

The Tenant submitted in evidence a letter from A.S., the occupant of unit #9, who writes that on August 7, 2014 she spoke with K.H. during a suite inspection and that at this time, K.H. informed A.S. that a person with the first initial “D” would be the building caretaker or superintendent and that the rental building would not have a live-in building manager or caretaker as the new caretaker had their own dwelling “nearby”. Similarly, the Tenant submitted a letter from S.J., the occupant of unit #8, who writes that during a suite inspection on August 8th, 2014, K.H. told her that the building manager, “D”, lived nearby and would not be a live-in caretaker.

K.H. testified that she stated to both A.S. and S.J. that “currently” there was no resident caretaker.

The proposed resident caretaker, M.M. testified on behalf of the Landlord. He stated that he has been a general contractor and handyman for 14-15 years. He works in the city centre and all of his clients are located in that area.

He stated that he signed the Resident Caretaker Agreement and believes that his duties at the subject rental building will not take more than a few hours a day. He expects to be able to continue working for all of his other clients. M.M. further testified that he is ready to begin work as soon as the rental unit is available. He confirmed the Resident Caretaker Agreement was only for six months and that it could be renewed if it “goes well”.

M.M.’s understanding of his responsibilities as a resident care taker are as follows:

- general cleaning;
- maintenance;
- preparing vacant units for new tenants;
- attending to emergencies;
- clearing leaves and snow from the outside of the building

M.M. testified that he requested a two bedroom unit as he and his fiancé and two cats require more space than a one bedroom unit. He also stated that he wanted to be on a higher than ground level floor because of his expensive tools. He did concede that he would utilize a storage area in the basement, but that he intended to have his expensive tools in his rental unit.

In cross examination and when asked about his remuneration, he stated that he was going to be paid \$1,182.00 per month and his rent was to be \$1,050.00 per month. When asked whether his rent was to be taken from his pay, such that he would only earn \$32.00, he responded that he did not know. When asked if the \$1,182.00 was a gross figure or net of taxes, again he stated that he did not know. He confirmed that he intended to support himself with his other clients.

In cross examination M.M. testified that only unit #29 was offered to him

The Tenants dispute the Notice, as they believe the notice was not issued in “good faith” and comes as a result of the tenants not agreeing to enter into a new tenancy agreement. Further, the Tenants point to the numerous notices, and submit that the Landlord is targeting them, and taking whatever steps are necessary to evict the Tenants.

Analysis

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

When a Tenant has failed to cancel a notice to end tenancy for Landlord's use and calls into question the "good faith" of the Landlord, the onus lies on the Landlord to prove the two part test as follows:

1. The Landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The Landlord must 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 supports a finding that the Landlord attempted to have the Tenant sign a new tenancy agreement. When the Tenants refused, the Landlord began issuing numerous notices as set out in the table above.

The Landlord attended the rental building on August 15, 2014 to post more notices and meet with some of the buildings' occupants. It is clear, from the letters written by some of those occupants, that others in the building were uncomfortable with the Landlords' actions, and in particular the repeated notices, and were appreciative of the Tenants watching out for them when they were not able to be at the rental building.

The Landlord's letter to the Tenants on August 19, 2014 clearly communicates how the Landlord felt about the Tenants' behaviour that day.

In this case, the Landlord issued three notices to end tenancy to the Tenants within 14 business days of owning the rental building. In addition, the Landlord issued a "Notice of Pending Application for Additional Rent Increase" wherein the Landlord communicated he was intending to seek a 29% rent increase. While the Landlord does not appear to have proceeded with that proposed rent increase, the message to the Tenants was clear. I find that the repeated notices and threatened rent increase communicated the Landlord's ulterior motive which was to have the Tenants move out of the rental unit by whatever means possible.

M.M. could not answer basic questions about his remuneration as resident caretaker. He also confirmed that only the subject rental unit was offered to him. He also conceded that the resident caretaker agreement between himself and the Landlord was for a six month duration. I find, on a balance of probabilities, that the resident caretaker agreement was negotiated after the August 15, 2014 incident and was done for the purpose of furthering the Landlord's ulterior motive of trying to evict the Tenants.

Two rental units were advertised by the Landlord as available September 1, 2014. While, arguably, the Landlord is not obligated to use a vacant unit for the caretaker, when all the circumstances of this case are considered, it leads to the inescapable conclusion that the Landlord was targeting these Tenants as there was no evidence the Landlord considered other rental units in the building as caretaker units.

In this case, I accept that the landlord had an ulterior motive for ending the tenancy; namely, I find that the Landlord sought to end the tenancy because the Tenants refused to sign the new tenancy agreement and the Landlord was unhappy with the Tenants behaviour on August 15, 2014. As such, I find that the Landlord has failed the second part of the two part test to establish good faith.

I grant the Tenant's application and cancel the 2 Month Notice to End the Tenancy for Landlord's Use of Property, issued on August 22, 2014. The tenancy will continue until legally end in accordance with the Act.

The Tenants, having been successful, are entitled to recovery of the filing fee. I order that the Landlord deduct the \$50.00 from the December 2014 rent.

Conclusion

The Tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord Use of Property is granted. The tenancy will continue until legally ended in accordance with the Act. The Tenant's application to recover the filing fee granted and is to be offset against the Tenant's obligation to pay rent for December 2014.

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 07, 2014

Residential Tenancy Branch

