



Dispute Resolution Services

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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 landlord's use of property.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The landlords were also represented by legal counsel, and the tenant was accompanied by a person for morale support who did not testify, with the consent of the landlords. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other and 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.

No issues with respect to service or delivery of documents or evidence were raised.

Issues to be Decided

Should the notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on December 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month and there are currently no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlords. A copy of the tenancy agreement has been provided.

The landlord further testified that the landlords reside in Alberta and their family considers the Okanagan to be their second home. Rather than continuing to rent a

hotel for visits by the landlords and their grown children, the landlords purchased the rental home for leisure purposes in 2006 and the landlords use a portion. The remaining portion is rented to the tenant. The rental unit includes a pool and 2 decks overlooking the lake. The landlords have had several discussions with their grown children and they agree that the landlords and their children want the entire property for their own use and that they need more privacy.

The landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to the tenant on October 23, 2014. A copy of the notice has been provided and it is dated October 23, 2014 and contains an expected date of vacancy of December 31, 2014. The reason for issuing the notice is: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse."

When asked by counsel why the notice was given, the landlord replied that the landlords wanted the tenant to initial a change in the tenancy agreement about not using the pool so that it could be used exclusively by the landlords because the tenant was not maintaining it properly. The tenant refused to initial the change, so the landlords spoke to their children again and the family decided to give a 2 Month Notice for Landlord's Use of Property to give the tenant more time to prepare to move out.

The landlord also testified that the portion of the home that the landlords currently occupy was occupied by the landlords for about 2 months during last year, in addition to some time that one of the landlords was there making improvements. None of the family will be moving into the rental unit, but the family wants the entire house for their own use as recreational property.

The landlord also testified that the landlords have not offered to reduce the rent for removal of the pool and sundecks. Nor have the landlords offered compensation for issuing the notice, but are prepared to do so if required.

The second landlord testified that the landlords wanted to remove the pool privileges because the tenant wasn't caring for it properly. When the landlord went to drain the pool for the winter, it wouldn't drain and the landlord had to get another pump. The repairs to the first pump cost around \$800.00.

The landlord also testified that the landlords have never threatened to kick the tenant out, but did want to change the tenancy agreement, and the tenant refused.

The tenant testified that on October 21, 2014 the landlord caught the tenant in the garage and proposed a new tenancy agreement and wanted the tenant to sign it at that

moment. The tenant refused, saying that it needed to be reviewed before it was signed. The change was to remove the tenant's access to the pool and to both sundecks, and the tenant disagreed. Over the course of the next few days, the landlord continued to bully and coerce the tenant verbally threatening the tenant and saying, "Why won't you sign it?" The landlord then told the tenant that if the tenant didn't sign it, the landlords were going to kick the tenant out. The landlord continued to bully the tenant to sign the new tenancy agreement and kept knocking on the door of the rental unit. The tenant stated that, "He found a way," by serving the 2 Month Notice to End Tenancy for Landlord's Use of Property. Even though the tenant has felt bullied, coerced and threatened, the tenant wants to stay in the rental unit and asks that the notice be cancelled.

During cross examination, the tenant denied asking for 2 months of free rent, but moved in 11 months ago and it's a big deal to move, only because the tenant has refused to sign a new agreement. Based on how much time the landlords were at the property last year, the tenant does not know if the landlords will move in.

Closing Arguments of Tenant

The tenant submits that when the tenant was given the ultimatum by the landlord, there was never any talk about the pump for the pool being damaged.

Closing Arguments of Landlord's Counsel

The landlords submit that they have established that they intend to use the property for the purpose for which they purchased it; as recreational property for recreational purposes and have decided to make use entirely of the property. There is no dispute that a tenancy agreement exists.

Analysis

Where a tenant disputes a notice ending the tenancy given by a landlord, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing it. The *Act* also specifies in what circumstances a tenancy ends, one of which is the landlord serving the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. I also find that the tenant has disputed the notice by filing an application for dispute resolution within the time set out in the *Act*.

With respect to the reason for issuing the notice, I refer to Policy Guideline 2 – Good Faith Requirement When Ending a Tenancy – which states that that *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in or allow a close

family member to move into the rental unit. Further, Section 51 of the *Act* states, in part:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, neither of the landlords nor any of the landlords' children intends to occupy the rental unit. The landlords have a contract with the tenant which is legally binding, and the landlords may only end the tenancy under this section if the landlords can establish in good faith that they or their children intend to live in the rental unit within a reasonable time after the effective date of the notice and for at least 6 months after that. It is not permissible under the *Act* to end a contract simply because the landlords have changed their minds about wanting a tenancy.

The notice ending the tenancy given by the landlords is hereby cancelled and the tenancy continues.

With respect to the pool, the *Act* states:

Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property 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: December 05, 2014

Residential Tenancy Branch

