



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for landlord's use of the property, a monetary order for the loss of quiet enjoyment and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlords confirmed receipt of the tenants' documentary evidence. The tenants confirmed receipt of the landlords' documentary evidence.

Both parties confirmed that the landlords had served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice or the notice) dated February 4, 2015 in person at the rental unit.

I accept the undisputed evidence of both parties and find that the landlords have properly served the tenants with the 2 Month Notice dated February 4, 2015.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the notice to end tenancy?

Are the tenants entitled to a monetary order for the damages or losses arising out of this tenancy?

Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

Both parties confirmed in their direct testimony that no signed tenancy agreement was made. Both parties confirmed that the tenancy began on June 1, 2014. The monthly rent is \$1,100.00, payable on the 1st of each month and a security deposit of \$550.00 was paid.

The tenants claimed that they entered into a verbal tenancy agreement for a 3 year fixed term tenancy to accommodate their son's schooling at the local high school due to a Pre- IB Program

for 1 year and the subsequent 2 year IB program. The tenants also stated that their son is a competitive swimmer and needs to be in the pool swimming early each morning.

The landlords disputed the tenants' claim stating that this was a month to month tenancy agreement instead of the verbal agreement of a fixed term of 3 years.

Both parties agreed that the landlords served the tenants with the 2 Month Notice. The notice identified an effective end of tenancy date of April 30, 2015 and one reason selected.

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.

The landlords stated that the female landlord's mother had a heart problem and that she would be moving in with the landlords so that they can help take care of her.

The tenants disputed the landlords' evidence stating that this is the first time the tenants had heard this reason for the notice. The tenants argued that the landlords provided a different reason in writing and provided a copy of the notice from the landlords in Chinese with an English translation. It states the landlords wished to have a relative's two children stay at their home with the female landlord's mother acting as a caregiver. The landlords confirmed this in their direct testimony.

The landlords clarified that after this notice was served, the landlords' friends' children moved to another school district.

The tenants seek a monetary claim of \$550.00 which consists of \$50.00 for translation services for the landlord's documentary evidence and \$500.00 for their loss of quiet enjoyment. The tenants clarified that the compensation is based upon a calculation that the tenants are entitled to recover 25% of the monthly rent for a period between June 2014 and December 2014.

The tenants withdrew the claim for loss of wages. As such no further action is required for this portion of the claim.

The tenant stated that during the course of the tenancy, the landlords had made a lot of noise after 10pm and sometimes even later. The tenant stated that the landlords were notified about the noise complaints at night and that periodic improvements were made.

The tenant stated that the landlords' daughter has a workstation directly above their bedroom and that it is noisy from the chair movement and people talking. The tenants also stated that this work station/family room area would be noisy when the landlords had guests present.

The tenant stated that a written notice was given to the landlords on January 3, 2015 describing the noise complaints to the landlords. The tenants stated that prior to moving in the landlord

assured the tenants that there would be no noise after 10pm to interfere with their early sleep schedules.

The tenant stated that during the tenancy the landlord made several demands to end the tenancy.

In September of 2014, the landlord made a verbal request for the tenant to move out after 30 days of notice for no reason. The tenants stated at this time the landlords had visitors and that there were frequent late nights with lots of noise from partying. The tenants stated that at the end of September 2014 the landlord, S.L. made another verbal request to end the tenancy for no reason. After this request, both parties met and discussed the issues regarding the tenancy. The tenants stated that a request was again made for there not to be any excessive noise from the workstation room above one of the bedrooms after 10pm. An agreement was made between the two parties to continue the tenancy. The tenant testified that in December 2014 the landlord, S.L. stated that she was unhappy with the situation and again made a verbal request to end the tenancy. On February 4, 2015 the landlord made another oral request to end the tenancy with no reason provided. The tenants responded by requesting a notice to end tenancy in writing with a stated reason. The landlords served a written request in Chinese to the tenant on February 3, 2015 with a reason to end the tenancy. The tenants stated they made a request to the landlords to cancel the request as the tenancy was finally working well. The landlords served the tenants with the 2 Month Notice on February 4, 2015.

The landlord disputed the tenants' claims stating that the landlords would take all reasonable and possible steps to insure that the tenants can enjoy a peaceful, quiet living environment.

The landlord stated that they responded to the tenants' issues regarding the office chair in the den that had caused noise for the tenants and that the landlord responded by installing a plastic protective cover (chair mat shown in the landlord's photographic evidence).

Analysis

Section 49(3) of the Residential Tenancy Act states,

(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.

It is clear based upon the evidence of both parties that the landlords have provided a written reason to the tenants that was different than the one provided during the hearing in their direct testimony for ending the tenancy. The tenants have provided a translated copy and the landlords have confirmed in their direct testimony that a relative's children from China would be staying with them and that the landlords' mother would move in and take care of them. This is contrary to the landlord's direct testimony that the landlord's mother was having health problems

and would no longer be living with her son and would have to move in with the female landlord (daughter) to be cared for. The landlords have stated that the landlord's father and mother currently live with their son and because of the landlord's mother's health issues she and not the father would move into the landlords' basement. The landlord stated that this change in reasons occurred shortly after the notice was served upon the tenant.

Residential Tenancy Branch Policy Guideline #2 speaks to good faith and states,

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. This might be documented through:
a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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

I find on a balance of probabilities that the landlord will not in good faith have her mother move in and reside in the rental unit. The landlord has provided two different reasons for the notice, only one was provided to the tenant with the written notice. The landlords could not provide any details of why the notice was not cancelled following the change in the circumstances. The landlords could not provide sufficient details of the female landlord's mother's health condition to explain why she would need to leave her current residence with her son and move in with her daughter without her husband. This is contrary to the landlords' reasons to end the tenancy that she would be fit to take care of two children. The landlord's good faith is also called into question based upon the tenant's undisputed testimony that the landlord made 3 verbal requests to end the tenancy over a 6 month period with no reasons provided.

The tenant's application to cancel the notice to end tenancy is granted. I find that the landlords have not demonstrated that the 2 Month Notice was issued in good faith to follow through on the

original reason provided for the notice. This establishes that the landlord had another possible purpose for issuing the notice. The 2 Month Notice dated February 4, 2015 is set aside and the tenancy shall continue.

Residential Tenancy Branch Policy Guidelines #6 speaks to the right of quiet enjoyment and states,

The Residential Tenancy Act and Manufactured Home Park Tenancy Act² (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- Reasonable privacy
- Freedom from unreasonable disturbance, exclusive possession, subject to the landlord's right of entry under the legislation and
- Use of common areas for reasonable and lawful purposes, free from significant interference.

A basis for finding a breach of quiet enjoyment may be:

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment

The tenant has provided undisputed evidence that when she moved in that the landlord had a daily schedule which would complement the tenant's. The tenants have stated that they are early sleepers retiring between 10-11pm each night and had confirmed with the landlords at the beginning of the tenancy that after 10pm the landlords' family would leave the work station/family room area (which is directly above tenant's bedrooms). The landlords have not disputed that the tenants brought concerns of noise after 10 pm on multiple occasions to the landlord's attention. This is supported by the submitted copies of the tenants' emails to the landlords.

On a balance of probabilities I am satisfied that the tenants have provided sufficient evidence that a loss of quiet enjoyment has occurred.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the loss of quiet enjoyment requiring compensation.

The tenant's claim is for \$550.00, consisting of \$500.00 for the loss of quiet enjoyment and \$50.00 for the cost of translation services.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Although helpful, the translation services cost incurred by the tenant are not recoverable. Accordingly, the tenants' claim for recovery of litigation costs (translation services) is dismissed.

The tenants stated that compensation should be equal to \$500.00 for the 6 month period between June and December 2014 because it is what they feel is fair. The tenants have provided 3 specific incidents of noise after 10 pm between June and September in which a meeting was held with the landlord and an agreement was reached. The tenants state that no issues were raised between October and November.

The tenants stated that in the last two weeks of December more noise was coming from the work station area from staying up late and that there were frequent parties until midnight. The landlords stated that these parties were due to Christmas and New Years Celebrations and were exceptions.

I have reviewed all of the submitted material and the direct testimony of both parties and find that the tenants have suffered a loss in quiet enjoyment. However, the tenants have failed to provide sufficient evidence to satisfy me of an actual amount for the monetary claim requested. The tenants have made their monetary claim based upon what they feel is fair and have failed to provide sufficient evidence in support of this amount. As such, I find that the tenants are entitled to a nominal award for the 4 month period between June and September for \$200.00, after which time the disturbances were infrequent.

The tenants are granted a nominal award of \$200.00. The tenants are also entitled to the recovery of their \$50.00 filing fee from the landlords. I grant a monetary order for \$250.00 to the tenants. This order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

Conclusion

The tenants' application to cancel the 2 Month Notice is granted. The 2 Month Notice dated February 4, 2015 is set aside and is of no continuing force or effect. This tenancy shall continue until ended in accordance with the Act.

The tenants are granted a monetary order for \$250.00, which may also be recovered by the tenants' deduction of this amount from a future stated monthly rental payment. The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders

may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 23, 2015

Residential Tenancy Branch

