



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 in response to the tenants' application for an Order to cancel the Two Month Notice to End Tenancy for landlord's use of the property.

The tenants and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2012. Rent for this unit in a duplex is \$750.00 per month due biweekly on the 1st and the 15th of each month.

The landlord's agent testified that the tenants were served a Two Month Notice to End Tenancy on May 31, 2015. This Notice has an effective date of August 01, 2015. The date the Notice was issued is recorded as May 31, 2015. The Notice stated that the landlords may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law and intends in good faith, to do any of the following: Renovate or repair the rental unit in a manner that requires the rental unit to be vacant. It must be noted here that this Notice is on an old form the type used in 2003 and which is no longer in use.

The landlord's agent testified that the duplex needs to be renovated and upgraded in order to be sold. The flooring needs to be replaced; the wiring needs updating; the roof, joists and walls on one side need to be replaced due to mould caused by a leak from the roof; the washer/dryer need to be removed from the basement; the basement needs to be backfilled; the furnace needs to be removed from the basement in order to back fill the basement; central air and heating will be installed; kitchen counter tops, cupboards and faucets need replacing; the interior and exterior walls need repainting; the bathrooms need replacing; new additions will be built to house the washer/dryer.

The landlord's agent testified that he has spoken to contractors who have informed the landlord's agent that this work will require vacant possession. The contractors have not obtained permits or approvals and cannot get these until the unit is vacant.

The tenants disputed the landlord's agent claims; the tenant DM gave testimony on behalf of both tenants and testified that the Notice is invalid as it is an outdated Notice. The tenants received the Notice on May 29, 2015 which is two days before the date the Notice was signed. DM testified that she contacted 11 contractors in the area and was told the unit does not need to be vacant before permits can be obtained. The 11 contractors all stated that no one from the landlord or landlord's agent has contacted them to provide estimates for this work. The contractors also informed the tenant that the basement could not be back filled due to the age of the unit. DM testified that she

also spoke to the City bylaw office who confirmed that permits and approvals have not been requested and do not require vacant possession in order to be issued.

DM testified that the landlord's agent's son lives in the duplex next door and has continued to live there. If renovations are needed that require vacant possession why is the landlord's agent's son still living in the other half of the duplex? DM testified that some renovations were carried out in 2011/ 2012. New carpets were put in by the previous landlord, DM testified that there is no mould in their unit and any mould can be removed using bleach and water, walls do not have to be taken down to remove mould. The landlord has not been to the tenants' unit to even assess if there is any mould. The basement has some cement area and does not need to be backfilled; there is nothing wrong with the kitchen cupboards and the faucets were recently replaced by the tenants and the landlord was given the bill for this. The exterior of the duplex is vinyl and this does not need to be painted, the unit was last painted in 2011. The previous owner had also put in new thermal windows, siding, a covered deck and fencing. The current landlord would be aware of this as he did the work for his father who was the previous landlord.

DM testified that there is also an issue with ownership of the duplex at the time the Two Month Notice was served upon the tenants. At that time the Duplex was owned by another family member and that family member did not know about the Notice or support the Notice. This landlord has become the legal owner since the Notice was issued.

Due to these issues the tenants call the landlords good faith in issuing the Notice into question.

Both parties decline to cross examine the other party on their evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In Order to be valid a Notice to End Tenancy must be on a current form providing all relevant information. The Two Month Notice served upon the tenants is on an older form which has not been in use for many years. Current forms are readily available from any government Service BC Office or any of the Residential Tenancy Branch's. Current forms can also be obtained through the Residential Tenancy website at www.gov.bc.ca/landlordtenant. Some of the information contained on this outdated Notice is no longer up to date and therefore I deem the Notice to be invalid.

In any event even if the Notice was valid I find the landlord has the burden of proof in this matter to show that the reason given on the notice is sufficient to end the tenancy. The tenants have contradicted the landlord's testimony and stated that renovations to the property were carried out in 2011/.2012 and the landlord has not provided any information showing that further renovations are required or that the landlord has all the necessary permits and approvals required by law in place to do the renovations the landlord has listed. The landlord's agent has testified that he cannot obtain permits or approvals until after the tenants have moved out; however, in my experience permits and approvals do not require vacant possession in order to be obtained. The *Residential Tenancy Act* states that these must be in place when a Notice to End Tenancy is issued for renovations or repairs. The landlord's agent gave testimony about renovations required that do not apparently need to be done such as painting the exterior of the unit and replacing a faucet which has recently been replaced by the tenants. I am satisfied from the evidence before me that the landlord has not been to the unit or sent any contractors to look at the unit to determine if any renovations are required. I find that even if the Notice was valid that the landlord has insufficient evidence to meet the burden of proof in this matter and I find the landlord has not issued this Notice in good faith. Based on this I would have to find in favor of the tenants' application to cancel the Notice.

Conclusion

The tenants' application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated May 31, 2015 is cancelled and the tenancy will continue.

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: August 07, 2015

Residential Tenancy Branch

