



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNL, FF
For the landlord: OPL, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The tenant applied for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of the Property ("Notice") issued by the landlord to the tenants and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the Notice and for recovery of the filing fee paid for this application.

The tenants, the landlord and her agent attended the hearing. The landlord's agent provided the testimony and evidence for the landlord.

At the beginning of the hearing, both parties confirmed receipt of the other's evidence, the landlord's agent confirmed receipt of the tenants' digital evidence and that they were able to view the contents of the digital evidence. Neither party raised an issue with the issue of the other's application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral, written, and digital evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit pursuant to her Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement entered into evidence shows that that this month-to-month tenancy began on August 1, 2014, monthly rent is \$900.00, and that the tenants paid a security deposit of \$450.00 and a pet damage deposit of \$100.00. The rental unit is a ground level basement suite and the landlord occupies the upper suite, along with her daughter, her agent here, and her 73 year old mother.

The subject of this dispute is the Notice issued on July 2, 2015, by slipping the document under the tenants' door on that date, with an effective end of tenancy date listed as August 31, 2015, according to the landlord. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

A 2 month notice to end the tenancy is not effective earlier than two months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the next rent payment is due is required in giving this type notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, as the effective end of tenancy date was not two clear calendar months after service on the tenants, the effective move-out date is changed to September 30, 2015.

Slipping documents under a door is not a recognized method of service of documents; however, in this case, the tenants filed an application in dispute of the Notice on July 6, 2015, and therefore the evidence shows that they did receive the Notice.

The Notice informed the tenants that they had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-

out date listed on the Notice. The tenants filed their application within the 15 days allowed.

Pursuant to the Rules, the landlord, through her agent, proceeded first in the hearing and submitted evidence in support of her Notice.

The landlord's agent submitted that her 73 year old grandmother, the landlord's mother, will be using the basement suite, as she now has impaired mobility and unable to easily walk up and down stairs. The landlord's agent submitted that it has become increasingly difficult to assist her grandmother up and down the stairs, due to her frail health and mobility, and it would be much easier for care workers and family members to tend to the landlord's mother or take her for appointments. The landlord's agent submitted that the doctor's report sent in as evidence shows that the landlord's mother has poor vision due to glaucoma, osteoporosis, chronic hepatitis, and double knee replacements. The doctor's note goes on to say that the landlord's mother should avoid repeated steps and stairs.

The landlord's agent contended that they did not know that they would need the basement suite at the time the tenancy began as the landlord's mother lived with her son, the landlord's brother; however, her brother is now deceased and the landlord was left caring for her mother.

The landlord's agent submitted that they also have large family parties planned and require the extra space for their company.

Tenants' response-

The tenants submitted that they believed the landlord was attempting to wrongfully evict the tenants, as the original reason given to them was that they intend to have parties in the basement suite.

The tenants submitted that the only reason the landlord is attempting to evict them was due to the written noise complaints made by the tenants, including the door slamming of the landlord and the landlord's dog continuous barking, all disturbing the tenants' right to quiet enjoyment, according to the tenants. The tenants submitted a copy of their written complaint, dated May 25, 2015, which they reduced to writing after months of verbal requests, according to the tenants.

The tenants submitted that the landlord's mother has been living with her since last summer, and that if the landlord truly intended for her mother to live in the basement

suite, the tenants would agree to divide the basement suite to give up a bedroom and bathroom for the landlord's mother, separated from the tenants' rental unit.

The tenants submitted further that if they had been given as reason that the landlord's mother would be living in the basement, they would not have filed to dispute the Notice, believing that having parties is not a valid reason for evicting tenants. The tenants submitted that they did not know the reason for their eviction until having received the landlord's application and pointed out that the doctor's note was dated after Notice was issued.

The tenants submitted further that an elderly woman does not need a 2 bedroom, 2 bathroom 1000 square feet living space.

The tenants' additional evidence was copies of multiple text messages between them and the landlord and photographs of the landlord's dog in the yard.

Analysis

Tenants' application-

Section 49(3) of the Act stipulates that 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, close family member defined as mother, father, or child.

In considering whether the landlord has acted in good faith, as was the implication of the tenants, a two part test is imposed, namely, that landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

As to the Notice, in the circumstances before me, I find that the landlord has submitted sufficient evidence that she or her mother intends to occupy the rental unit for their own use. Occupation is not limited to residency, as a landlord may simply have a use for the rental unit, such as storage or family parties, in this case.

As to the good faith intent raised by the tenants, that is, did the landlord have a dishonest purpose in issuing the Notice, the burden is on the landlord to establish that

they truly intended to do what they said on the notice to end tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In reviewing the evidence of the parties, I cannot find that the landlord acted dishonestly or with an ulterior motive. The tenants submitted that the landlord issued the Notice due to a written noise complaint; however, the evidence showed a point by point response to the tenants stating what steps the landlord has taken to ensure that the tenants were not bothered by door slamming or dog barking and that their noise complaints had been dealt with.

I also considered the tenants' contention that the doctor's note was not dated until after the Notice was issued; however, in reviewing the doctor's note, I find the information shows that the landlord's mother's poor health has been ongoing and confirms that landlord's agents statements that her grandmother is not able to easily navigate stairs. Had the doctor's note suggested that the health issues just arose after the Notice was issued, I would conclude differently.

I therefore find that, upon a balance of probabilities, the landlord has met her burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith.

I therefore dismiss the tenants' application seeking to cancellation of the Notice, without leave to reapply.

Landlord's application-

As I have dismissed the tenants' application due to my finding that the landlord issued the Notice in good faith and intends on her mother occupying the rental unit or having family parties, I therefore find the Notice is valid and enforceable. As such, I grant the landlord's application seeking an order of possession for the rental unit.

I therefore find that the landlord is entitled to and I grant an order of possession for the rental unit effective on the corrected move-out date on the Notice, or September 30, 2015, pursuant to section 55 of the Act. The order of possession for the rental unit is enclosed with the landlord's Decision and must be served on the tenants to be enforceable. Should the tenants fail to vacate the rental unit by 1:00 p.m., September 30, 2015, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I decline to award the landlord recovery of her filing fee, as the landlord had the choice to make a verbal request for an order of possession for the rental unit at the hearing on the tenants' application, without filing her application seeking such order.

The landlord and the tenants are hereby advised of the provisions of section 51(1) of the Act, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the Act is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord and the tenants are also advised of the provisions of section 51(2) of the Act, which stipulates that the landlord must pay the tenants the equivalent of two months' rent payable under the tenancy agreement if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Conclusion

For the reasons stated above, the tenants' application is dismissed.

The landlord's application has been granted and the landlord has been issued an order of possession for the rental unit, effective at 1:00 p.m. on September 30, 2015.

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: September 7, 2015

Residential Tenancy Branch

