



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: CNL, FF

Landlord's application: OPL, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The tenants and the landlord's agent called into the conference call and participated in the hearing. The tenants applied to cancel a two month Notice to End Tenancy for landlord's use. The landlord applied for an order for possession and a monetary order

Issue(s) to be Decided

Should the Notice to End Tenancy for landlord's use dated August 19, 2015 be cancelled?
Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenants have occupied the rental unit since in or about 2009. They were not named as tenants on the original tenancy agreement although they were referred to in the agreement as occupants. The tenants continued to rent the unit and pay rent after the named tenant moved out. The landlord named in the tenancy agreement was a property management company employed by the landlord to manage the property on her behalf because the owner lives in China.

In January, 2015 the former property manager ceased to act as landlord. The owner appointed another property manager to act on her behalf. After his appointment, the property manager sought to have the tenants sign a new tenancy agreement, naming the owner as landlord and the tenants in this proceeding as tenants under the agreement. Due to differences of opinion as to the appropriate terms to be included in the new agreement, it was never signed, but the tenants provided the landlord with post-dated cheques and continued to pay the established monthly rent of \$2,548.50.

On August 12, 2015, the owner of the rental unit viewed the unit together with her property manager. At the hearing the landlord's agent testified that that the owner came to view the rental unit with the intention that she may occupy the unit.

On or about August 19, 2015 the tenants were served with a two month Notice to End Tenancy for landlord's use. The Notice was dated August 19, 2015 and it required the tenants to move out of the rental unit by October 31, 2015. The Notice to End Tenancy was signed by the owner's property manager as her agent. The stated ground for the Notice to End Tenancy was that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member. The owner did not attend the hearing or submit any form of statement or other document to confirm her intention to occupy the rental unit. The landlord's agent said that the owner was unavailable to participate in the hearing because she was out of the country.

The tenants submitted documents and copies of voice recordings of conversations with the landlord's agent. They submitted that the evidence showed that the landlord did not intend in good faith to occupy the rental unit. They submitted that the Notice had been given because the relationship between the tenants and the new property manager has become acrimonious. They also submitted that the landlord is likely seeking to end the tenancy because the rent paid by the tenants is significantly lower than comparable rents for similar units in the vicinity.

The tenants referred to documentary evidence apparently obtained from the former property manager. The tenants submitted that a ledger referring to several different property addresses showed that the landlord owned a number of rental properties, casting doubt upon the likelihood that she intended to occupy this rental unit.

The landlord's agent denied that the ledger was a list of properties owned by the landlord. He said that of the properties listed on the ledger only the rental unit was owned by the landlord. The landlord's agent did acknowledge at the hearing that the landlord had recently purchased another local property. The landlord's agent testified that the typed transcript of conversations he had with the tenants was inaccurate and misleading. He said that he listened to the actual recordings and the transcript was an out of context misrepresentation of what had actually been said.

The landlord's agent submitted late evidence concerning what was alleged to be the tenants' failure to redirect mail to the landlord. The landlord's agent submitted that the tenants' failure had financial consequences for the landlord and submitted that this was relevant to the Notice to End Tenancy.

Analysis

I do not regard the tenants' evidence concerning the landlord's property ownership to be convincing and I have disregarded the transcripts of alleged conversations had with the

landlord's agent. I find, however, that the landlord has failed to provide sufficient convincing evidence to show that she does intend in good faith, to occupy the rental unit. Apart from a text message from one of the tenants to the landlord's agent to confirm an appointment to view the rental unit, nothing has been provided to confirm the landlord's intentions to occupy the unit. According to the tenants, the landlord resides in China.

When the landlord's good faith intention to occupy the rental unit has been put in issue as is the case here, then there is an expectation that the landlord will provide some evidence to support the grounds for the Notice to End Tenancy. This may include oral testimony, a sworn statement, and confirmation that the landlord has taken steps to move to the location of the rental unit. The landlord has provided no substantive evidence to show that she intends to reside in the rental unit; she did not even sign the Notice to End Tenancy or the application for dispute resolution. All these documents were signed by her agent. In the absence of any convincing evidence to show that the landlord intends to occupy the rental unit and in light of the tenants' evidence to suggest that the landlord has other motives for ending the tenancy, I find that the Notice to End Tenancy must be cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The tenants have offered to replace rent cheques that were returned to them; the landlord is obliged to accept the tenants' rent payments and allow the tenancy to continue.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is granted. The landlord's application to cancel the Notice to End Tenancy is dismissed, as is the application for a monetary award. The tenants are entitled to recover the \$50.00 filing fee for their application. They may deduct the sum of \$50.00 from a future instalment of rent.

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 05, 2015

Residential Tenancy Branch

