Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Preliminary Issues

The Landlord testified that the rental unit address was located on an Avenue and not a Street. Accordingly, the style of cause was amended to show the rental unit address as ending with Avenue, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 7, 2015. The Tenants filed seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant R.G. Each person gave affirmed testimony and the Tenant confirmed that he would be representing the other Tenant, J.S., as English was her second language. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On November 26 2015 the Tenants submitted eight pages of evidence to the Residential Tenancy Branch. The Tenant affirmed that he served the Landlord November 26, 2015 with copies of the same documents that he had served the Residential Tenancy Branch (RTB). The Landlord acknowledged receipt of these documents. As such, I accepted those documents as evidence for these proceedings.

On November 4, 2015 the Landlord submitted one page of evidence and on November 27, 2015 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Landlord testified that he did not serve copies of those documents to the Tenants. The Tenant confirmed that he had not been served evidence from the Landlord.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

> 1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are in intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlord's evidence was not served upon the Tenants in accordance with Rule of Procedure 3.15, I declined to consider that documentary evidence. I did however consider the Landlord's oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord met the Good Faith requirement regarding the 2 Month Notice to end tenancy issued September 22, 2015?
2. If not, should the 2 Month Notice be upheld or cancelled?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on August 1, 2014 and switched to a month to month tenancy after July 31, 2015. Rent of $1,300.00 was initially payable on the 31st of each month and has subsequently been change to $1,291.50 being paid on the 1st of each month. On or shortly before August 1, 2014 the Tenants paid $650.00 as a security deposit.

The rental unit was described as being a basement suite which is located in half of the basement of a single detached home. The other half of the basement has at times been occupied by the Landlord's son and daughter in-law and by ESL (English as a second language) students. The Landlord and his family reside in the upper level of the house.

On September 22, 2015 the Landlord served the Tenant a 2 Month Notice to end tenancy for the following reason:

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.
[Reproduced as written]

The Landlord testified that his second child, A.W. is currently residing with the Landlord's mother and recently his sister and her family have moved into his mother's house. The Landlord stated that there were "so many people" living with his mother that his son has decided to move back with them. He submitted that his son was "30 something" years old and was not there to present testimony because he was at work.

The Tenant testified that the Landlord's reasons for issuing the 2 Month Notice were not factual; were unfounded; and the Landlord provided no evidence to prove his reasons were fact.

The Tenant asserted that the 2 Month Notice was issued because of recent events and not because the Landlord's son wanted to move into the unit. The Tenant submitted a chronological list which included details of events leading up to the issuance of the 2 Month Notice. I have summarized those events as follows:

- September 2014 to April 2015 the Tenants had complained about ongoing issues with 2 ESL Students who had been residing in the other half of the basement;
- September 10, 2015 the Tenants complained to the Landlord about the careless actions of workmen who were doing construction work on the upper deck that was located directly over the Tenants' doorway;
- September 10, 2015 the Tenant called the City office and WorkSafe BC to report his concerns with the unsafe manner in which the deck work was being performed;
- September 17, 2015 the shared washing machine had overflowed causing water to run onto the floor. The Landlord knocked on the Tenants' door informing them of the issue with the washing machine and during that conversation an adversarial discussion took place.
- On September 22, 2015 the Landlord attended the rental unit with his son B.W. to serve the Tenants the 2 Month Notice. The Tenant argued that the Landlord told him that his son B.W. and his wife would be moving into the rental unit. The Tenant asked B.W. directly if he was moving in and B.W. refused to say anything. He said the Landlord also told him that the current ESL Students could move into the rental unit because the Landlord said he was considered their home-stay father.

The Tenant asserted that it was the accumulation of the above events which caused the Landlord to evict him five days after the washing machine overflowed.

The Landlord disputed the Tenant's submissions and argued that he had never told him that B.W was moving in. He confirmed that B.W. did not speak or respond to the Tenant when asked questions on September 22, 2015. The Landlord asserted that the Tenant

intentionally tried to make him angry because the Tenant did not tell him he had called the City and WorkSafe BC until he knocked on his door when the washing machine overflowed.

Analysis

After careful consideration of the totality of events listed above, and on a balance of probabilities I find as follows:

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 88 of the Act.

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy a two part test as set forth under the Act. Section 49 (3) of the *Act* states 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.

The *Residential Tenancy Policy Guideline # 2* sets out the two part test, which I agree with, for the "good faith" requirement as follows:

1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering the 2 Month Notice on its merits, in absence of documentary evidence from the Landlord to prove the contrary, I do not find that the issuance of the Notice was driven solely by the Landlord's intention to have their son occupy the rental unit.

Notwithstanding the Landlord's submission that his son decided to move in with them because the Landlord's mother's house has so many people living there; I favored the Tenant's submissions. Based on the submissions during the hearing, it was clear to me that the Landlord had an ulterior motive for ending the tenancy. There is undisputed evidence that a history of issues had been presented to the Landlord from these Tenants almost from the onset of their tenancy, which caused the Landlord to take actions that he may otherwise not have taken; such as reducing the rent.

In addition, I do not find it a mere coincidence that the Landlord served the Tenants a 2 Month Notice on September 22, 2015 only five days after the washing machine overflowed. Rather, I conclude that the catalyst which caused the Landlord to take action to evict the Tenants was when the Landlord was upset about the washing machine over flowing and it was during that upset that the Tenant told him that they had called the City and WorkSafe BC in regards to the deck construction.

Based on the above, I find the Landlord provided insufficient evidence to meet the two part test to uphold the 2 Month Notice to end tenancy. Accordingly, I find in favor of the Tenant's application and I cancel the 2 Month Notice to end tenancy issued September 22, 2015. As the September 22, 2015 Notice has been cancelled the Tenants are no longer entitled to compensation equal to one month's rent provided for in section 51(1) of the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenants were successful with their application and the 2 Month Notice to end tenancy for landlord's use issued September 22, 2015, was cancelled, and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenants may deduct the one time award of **$50.00** from their next rent payment, as full recovery of their filing fee, pursuant to section 72(2)(a) of the *Act*.

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 10, 2015

Residential Tenancy Branch