Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAIA PROTECTION FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 2, 2016 ("2 Month Notice"), pursuant to section 49;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The individual landlord named in this application, FV ("landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the caretaker of lands for the landlord company named in this application and that he had authority to speak on its behalf at this hearing. This hearing lasted approximately 82 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' Application.

I advised both parties during the hearing that I would consider the landlords' two page written evidence package at this hearing, despite the fact that the tenants said that they received it less than 7 days before this hearing, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*. The tenants simply stated that the landlord did not follow the *Rules of Procedure*. I find that the tenants received and reviewed the evidence, had notice of it, and could not identify any prejudice to them if I considered the evidence.

The tenants confirmed personal receipt of the 2 Month Notice on February 3, 2016. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the 2 Month Notice on February 3, 2016.

At the outset of the hearing, the tenants confirmed that the "other unspecified remedies" in their Application was for a monetary order for compensation. I advised the tenants that they had not applied for a monetary order, indicated any amounts or information in their "details of the dispute" portion of the Application or indicated an amount, so the landlords had no notice of their claim. I notified the tenants that "other unspecified remedies" was the incorrect relief to claim for a monetary order, as there is a specific portion of the Application to complete for that claim. Accordingly, I dismiss the tenants' Application for other unspecified remedies without leave to reapply.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for their Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this tenancy began on February 1, 2014. Monthly rent in the amount of $1,150.00 is payable on the first day of each month. A security deposit of $575.00 was paid by the tenants and the landlords continue to retain this deposit. The tenants continue to reside in the rental unit.

Both parties agreed that the current written tenancy agreement was signed from February 1, 2015 for a fixed term of one year after which it converted to a month-to-month tenancy. Both parties agreed that the landlords' proposed written tenancy agreement from February 1, 2016 for a six month period after which the tenants were required to move out of the unit, with rent at $1,178.00 per month, was not signed by the tenants as they did not agree to vacate at the end of the term. Copies of the current written tenancy agreement and the proposed written tenancy agreement were provided for this hearing. The landlord said that the tenants' rent has remained the same throughout the tenancy and although the draft tenancy agreement proposed a slightly

higher rent, it was within the Residential Tenancy Regulation ("Regulation") amount of 2.5%. He noted that this was not an attempt to substantially increase the rent for this unit. He said that no other notices to end tenancy were given to these tenants during this tenancy.

The landlords' 2 Month Notice, which states an effective move-out date of April 30, 2016, identified the following reason for seeking an end to this tenancy:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The landlord said that he currently performs a caretaker's job on the 10 acre residential property but he is 73 years old and it is becoming too much for him. He said that there is extensive farming and animal work to perform on the property, contrary to the tenants' contention that he only drives a tractor and brings cows to graze. The landlord provided the name of the new caretaker that will be moving into the unit, as the tenants requested the name during the hearing. The landlord said that he is currently "grooming" this person for the caretaker position and the new caretaker is currently living with him but it is not sustainable for the future. The landlord said that this new caretaker needs his own place on the actual farming property in order to care for it.

The tenants said that shortly after they began their tenancy, around mid-2014, they noticed that squatters began living on the property in yurts, busses, motorhomes, shacks and outhouses. The tenants provided coloured photographs to confirm the above. The landlord said that these other people living on the property were given notices that their tenancy agreements would not be renewed, as they would be ending in the next one to two months. The tenants stated that they complained to the landlord about the squatters around January 2015, after they signed the current tenancy agreement in December 2014. The tenants said that the landlords were annoyed with their complaints. The landlords then proposed a draft tenancy agreement for February 1, 2016, which the tenants did not sign.

The tenants said that they have not heard of the landlord company named in this application, as they only dealt with the individual landlord throughout this tenancy. They said that the company was not registered in B.C., to which the landlord agreed and said that it was registered in another country. The tenants provided an email, dated May 2, 2015, from the landlords stating that they wanted tenants to stay long term if they supported a certain philosophy. The tenants said that because they did not support this philosophy, the landlords wanted to get rid of them. The landlord denied this, stating that the company wanted a new caretaker who supported this philosophy in his work.

Analysis

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants received the 2 Month Notice on February 3, 2016, and filed their Application on February 15, 2016. Therefore, the tenants are within the time limit under the *Act*. The onus, therefore, shifts to the landlords to justify the basis of the 2 Month Notice.

Subsection 49(6)(e) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit if the landlords intend, in good faith, to convert the rental unit for use by a caretaker/manager of the residential property.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

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

I accept the landlord's testimony that he requires a caretaker/manager to move into the rental unit in order to care for the 10 acre property. The landlord provided a letter from the landlord company, dated March 7, 2016, indicating that the rental unit would be used for a caretaker. The landlord said that he requires someone to take over because of his own increasing age and inability to properly care for the large property. The new caretaker is currently being groomed at the landlord's house and needs to move into the unit to perform caretaker duties on the property itself. The landlord is ending other tenancies on the property as well.

I find that the tenants failed to show that the landlords did not issue the notice in good faith. The landlords have not issued any other notices to end tenancy to the tenants. The landlords have not increased the rent during this tenancy of over two years. The 2.5% rent increase in the proposed tenancy agreement, which the tenants did not sign, is small and below the *Regulation* amount of 2.9% for 2016. The tenants said squatters began residing at the property in mid-2014 and although they began complaining in January 2015, the landlords did not issue any notices to end tenancy and continued their tenancy. The landlords did not propose a new tenancy agreement until the following year at the end of the fixed term in February 2016. I do not find that the landlord company being registered out of the country or having certain philosophies to have anything to do with this tenancy, except that the landlords expect the new caretaker to abide by the company's philosophies.

Based on a balance of probabilities and for the above reasons, I find that the landlords intend, in good faith, to convert the rental unit for use by a caretaker/manager of the residential property. I find that the landlords have met their onus of proof under section 49(6)(e) of the *Act*.

Accordingly, I dismiss the tenants' application to cancel the 2 Month Notice. I uphold the landlord's 2 Month Notice, dated February 2, 2016. I grant an order of possession to the landlord effective at 1:00 p.m. on April 30, 2016, the effective date of the 2 Month Notice.

As the tenants were unsuccessful in this Application, they are not entitled to recover the $100.00 filing fee paid for this Application. The tenants must bear the cost of their own filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlords effective at 1:00 p.m. on April 30, 2016**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 07, 2016

Residential Tenancy Branch