



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DIR, LAT, LRE, OLC, PSF, RR, FF, O

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use; disputing a rent increase; limiting the landlords' right of entry; authorizing the tenant to change the locks to the rental unit; ordering the landlords to comply with the Act, regulation or tenancy agreement; compelling the landlords to provide services or facilities required by law; allowing the tenants to reduce the rent for repairs, services or facilities agreed upon but not provided; and reimbursement of the filing fee paid by the tenants.

Both parties appeared and had an opportunity to be heard.

The tenants had filed an evidence package within the time required to do so and had filed a copy of the proof of service of the evidence on the landlords.

The landlords filed written evidence after the deadline for doing so. As the hearing was scheduled for March 24 the evidence had to be served on the tenants and received by the Residential Tenancy Branch on or before March 16. The landlord stated that the evidence package had been sent by Xpresspost and the post office had told him that the documents would be delivered by March 15. The landlord provided the tracking number for the package. A search of the Canada Post web site revealed that the package had been mailed on March 13 and delivered on March 18.

The tenants said they had not received the evidence package. The mail for all three units in this house goes to one mailbox and the upstairs resident, who has control of the mailbox, had not yet given them this mail. The tenants objected to the admission of the landlords' written evidence.

The tenants specified the address to which evidence could be sent on their Application for Dispute Resolution. As long as the evidence is received at that address on or before the required date it is deemed served.

Section 90 of the *Residential Tenancy Act* provides that documents sent by mail are deemed delivered on the fifth day after mailing. Accordingly, when evidence is served by mail, the person serving the evidence should send the documents at least five days before the deadline.

In this case, I was able to decide the issue based entirely upon the written and oral testimony of the tenants and the oral testimony of the landlords. As a result, I have not considered the landlords' written evidence.

Only the evidence that was required to render this decision has been described in this decision.

Issue(s) to be Decided

- Is the 2 Month Notice to End Tenancy for Landlord's Use dated February 19, 2016 valid?
- Are the tenants entitled to any of the other relief requested and, if so, on what terms?

Background and Evidence

The rental unit is one of two suites on the lower level of a house. It is a two bedroom unit. The previous landlord, KA, lived on the main level of the house and was the landlord the tenants first rented from. AK's parents have lived in the one bedroom unit on the lower level for many years.

According to the tenants, their tenancy commenced August 1, 2002. There is no written tenancy agreement. The monthly rent of \$550.00, which is due on the first day of the month includes all utilities except telephone, Internet, and one parking spot, but does not include laundry. The landlord testified that he had been given no particulars about the tenancy agreement by KA but he did not challenge anything stated by the tenants.

The landlord GM testified that he, his cousin (who is the other landlord named on this application), and their wives bought the property as partners, not as a limited company. The closing date of the sale was January 4, 2016.

Before the sale closed they agreed with the vendor KA that KA would rent the entire house from them for \$2000.00 per month, including all utilities, until March 31. The tenants confirmed that in January, February and March they continued to pay their rent

to KA. The landlord confirmed that KA paid \$2000.00 a month to them and continued to pay for the utilities which were in KA's name.

The landlord testified that their plan is that he and his family, including his brother-in-law, are going to move into the upstairs unit on March 31. This is not disputed by the tenants.

He also testified that their plan has always been that his cousin's mother would move into the tenants' unit. The cousin lives across the fence from the rental unit with his family and his mother has been living with him. The tenants dispute the veracity of this statement. Both parties gave substantial evidence in support of their positions.

After the house sale closed the landlord asked KA to give the tenants a notice to end tenancy and reduced this request to writing. At first, KA just gave the landlord's written request to the tenants. On February 19 the landlord signed a formal 2 Month Notice to End Tenancy for Landlord's Use in the prescribed form and gave it to KA, who served it on the tenants. The effective date of the notice is April 30, 2016.

The reasons stated on the notice are:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.
- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Analysis

A "family corporation" refers to a limited company in which all the voting shares are owned by members of the same family. The purchasers bought this property as four individuals, not as a limited company, so the first reason marked on the notice to end tenancy does not apply to this situation.

The second reason marked on the notice is intended for the situation where an individual(s) has purchased the property; the closing date is sometime in the future; and the purchaser or a close family member of the purchaser intends to move into the unit once ownership of the property has changed. The purchaser asks the vendor to give the tenants the 2 Month Notice to End Tenancy for Landlord's Use before the closing date; and it is given to the tenants by the vendor while the vendor is still the registered owner of the property and is still their landlord.

That is not the situation here. The purchasers have been the landlords since the closing date. The purchasers rented the upper unit to the vendor and their relationship has been landlord/tenant, not vendor purchaser, since the closing date. Further, on the closing date they stepped into the vendor's shoes regarding his agreement with the tenants, as all purchasers of tenanted property assume the responsibilities of the vendor on any existing tenancy agreements. Although the vendor continued to collect rent from the tenants and to communicate with them, he did so as the agent of the landlords.

The provision of section 47 that applies to this situation is subsection (3) which allows a landlord to end a tenancy because the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. That is the reason set out in the first box on the notice to tenancy form; one which was not marked by the landlord.

Accordingly, I find the 2 Month Notice to End Tenancy for Landlord's Use dated February 19, 2016, is not valid. The landlords may serve the tenants with a new notice to end tenancy giving the proper reason for ending this tenancy and the tenants may, if they wish, dispute the new notice just as they have on this occasion.

No decision has been made on the "good faith" requirement of section 47(3).

With regard to all the other claims made by the tenants there is only conflicting evidence from the parties as to whether an increase in rent has been requested by the landlords; no actual written demand or attempt to collect a large amount. There is no evidence that the landlords have not or will not provide the same utilities and services they have been receiving; and no evidence that the landlords have made any attempt to enter the unit improperly. Accordingly, all other claims by the tenants are dismissed, with one exception

As the tenants were successful on their application to have the notice set aside they are entitled to reimbursement from the landlords of the \$100.00 fee they paid to file it. This amount may be deducted from the next rent payment due to the landlords.

Conclusion

- For the reasons set out above the 2 Month Notice to End Tenancy for Landlord's Use dated February 19, 2016 has been set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

- All other claims by the tenants, except the claim for reimbursement of the filing fee from the landlords, have been dismissed.

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 04, 2016

Residential Tenancy Branch