



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fort Langley Wine Co Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, ERP, RP, LRE, RR, MNDC, OPL, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants applied on April 7, with an amendment made April 11, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply - Section 62;
4. An Order for emergency and other repairs - Section 32;
5. An Order suspending the Landlord's right to enter the unit - Section 70;
6. An Order for a rent reduction - Section 65; and
7. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 28, 2016 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

Landlord TB was unsure if he was properly named as a Landlord and states that he is only an employed manager of the company that owns the property and that he has acted for the Landlord as a go-between with the Tenants. It is noted that Landlord TB agreed that he was not attending the hearing as a Witness. Landlord TB continued to

participate as an Agent during the Hearing however given Landlord TB's status as an employee of the company I decline to make any monetary awards against Landlord TB.

Noting that the numerous claims made in each application are not related to each other, the Parties identified the matter of the tenancy continuation to be the most compelling. The Tenants confirmed that there were no emergency repairs and that the matter of entry by the Landlord was not urgent. The Tenants state that their claim for compensation is solely in relation to loss of the yard and confirmed that this was the initial reason for the Tenants' application for dispute resolution following which the Landlord served the notice to end tenancy.

Rule 2.3 of the RTB Rules of Procedure provides that claims contained in an application must be related to each other. Given the evidence of unrelated and urgent claims, I dismiss the Landlord's claims for unpaid utilities and compensation with leave to reapply, leaving only the claim for an order of possession and recovery of the filing fee for this hearing. With the exception of the claim to cancel the notice to end tenancy and the claim for compensation, I dismiss the Tenants' claims in the application with leave to reapply.

Issue(s) to be Decided

Does the Landlord have a good faith intention to end the tenancy?

Has the Tenant suffered a loss during the tenancy?

Background and Evidence

The following are undisputed or agreed and relevant facts: The tenancy started in June 2013. Although a written tenancy agreement was signed, neither Party has a copy of the agreement. Rent of \$2,500.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,500.00 as security deposit. No pet deposit was collected. On April 9, 2016 the Landlord served the Tenants with a 2 month notice to end tenancy for landlord's use (the "Notice"). The reason for ending the tenancy as set out on the Notice is that the Landlord intends to occupy the unit.

The Landlord submits that the owner of the rental unit is ready to move to Canada and has chosen to live in the rental unit. The Landlord's written submissions set out an additional 9 reasons for ending the tenancy and the Landlord confirmed at the hearing that these reasons all exist for wanting to end the tenancy.

The Tenant states that the Landlord informed the Tenant in May 2015 that they would be taking back use of a portion of the yard and would discuss compensation with the Tenants when that occurred. The Tenant states that from January 2016 onward and without their agreement the Landlord took away $\frac{3}{4}$ of the yard by placing a barrier around it. The Tenant states that the Landlord has refused to compensate the Tenants for the loss of this yard. The Tenant states that a primary reason for entering into the tenancy agreement was the use of the yard. The Tenant claims a loss of \$500.00 per month and states that this amount is based on the \$2,000.00 monthly rent paid by a neighbour with similar square feet for living space and no yard at all.

Landlord WS states that the Tenant is not entitled to compensation because the Landlord does not have a copy of the tenancy agreement to know if the yard is included. Landlord WS states that since the Tenant continued to pay the full rent after the yard was removed the Tenants impliedly agreed to the loss of the yard for no compensation. Landlord WS states that the Tenants' unit has more bedrooms and bathrooms than the neighbour's house and therefore the neighbour's rent is not a good indicator of the value of the Tenants' unit. Landlord TB states that the tenancy agreement was negotiated by a previous manager and that they were unable to contact this person to obtain a copy of the agreement but that the Tenant did have full use of the yard from the start of the tenancy until December 2015. Landlord SU states that he is undecided on whether or not the yard will eventually be returned to the Tenants.

The Tenant states that the previous manager had to get Landlord SU's permission for everything.

Analysis

Section 19 of the Act provides that a landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. This section further provides that if a landlord accepts a security deposit that is greater than the amount permitted the tenant may deduct the overpayment from rent or otherwise recover the overpayment. As the Landlord collected more than half of the amount of rent as a security deposit I find that the Tenant is entitled to return of **\$1,250.00**.

Section 49(3) of the Act provides 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. Policy Guideline 2, Good Faith Requirement, provides that 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. Given the lack of supporting evidence or other details of the foreign owner's arrival or residence in Canada and considering the 9 additional reasons for ending the tenancy for which the Landlord provided supporting materials, I find that the Landlord does not have a good faith intention to end the tenancy for the sole purpose stated in the Notice. As a result I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

As the Notice has been cancelled, the Landlord is not entitled to either the order of possession or the filing fee and I dismiss both these claims.

Section 7 of the Act provides that where a landlord does not comply with the tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 28 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the tenancy agreement. I accept the Tenants' credible evidence that the tenancy agreement included the full yard.

As the Tenants were required under the Act to continue the payment of the full rent despite the loss of the yard, I find that this act does not constitute an agreement to a loss of the yard or a waiver of compensation for the loss.

As the Landlord did not obtain the Tenants' agreement to give up the yard I find that the Tenants remain entitled to the yard under the tenancy agreement. As the Tenants have lost most of the yard and accepting the Tenants' persuasive evidence that the yard was a primary factor behind the Tenants entering into the tenancy agreement, I find that the Tenants have substantiated a loss. For these reasons and considering the amount of rent being paid by the Tenants I find that the Tenants are entitled to the claimed amount of \$500.00 per month for the period January to May 2016 inclusive for a total of **\$2,500.00**. The Tenants are also entitled to a continuing rent reduction of \$500.00 per month from June 2016 onward until such time as the yard is returned to the Tenants or the tenancy ends. As the Tenants' claims have been successful I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,850.00**. The Tenants may deduct this amount from future rents payable in full satisfaction of the claims.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenants an order under Section 67 of the Act for **\$3,850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court. 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: May 12, 2016

Residential Tenancy Branch