



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matters

The Landlord states that on May 1, 2016 a 57 page evidence package was given to the Tenant in person and delivered in person to the RTB. The Tenant confirms receipt of the evidence package. No such package was evident from the RTB for this hearing.

The Landlord states that the Tenant’s evidence package contains portions of the Landlord’s evidence and the Landlord states that this is sufficient evidence of the Landlord’s renovations to their residence and wishes to proceed without any adjournment. As the Landlord is prepared to proceed without its evidence package for consideration and as the Landlord may provide oral evidence of the contents of that package, I find that no adjournment is necessary.

The Agent for Tenant DC asks for an adjournment in order that Tenant DC, the wife of Tenant CC, may attend the hearing. The Agent states that Tenant DC is currently in the

hospital and medically unable to attend the hearing. The Agent states that Tenant DC was not served with any documents for the hearing and was just recently informed about the dispute. Tenant CC states that the news about the dispute was withheld from his wife in order not to cause her any distress. Tenant CC and the Agent are not aware of any additional evidence that Tenant DC could offer that could not be provided by Tenant CC. The Landlord states that to delay the hearing would prejudice the Landlord's rights as they have put their renovations on hold until this matter is determined.

As the Tenants are married and reside together and considering that a notice to end tenancy is not required to be served on each tenant in a rental unit, I find that the Landlord sufficiently served the notice to end tenancy and its evidence package to the Tenants. As Tenant CC is present and able to provide evidence and since there is no indication that Tenant DC would add to this evidence, given the time considerations, I find that to adjourn the matter would unnecessarily prolong the matter and would prejudice the Landlord. I therefore decline to adjourn the hearing.

Issue(s) to be Decided

Does the Landlord have a good faith intention to move into the unit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2012. Rent of \$2,600.00 is payable on the first day of each month.

On March 13, 2016 a 3rd notice to end tenancy for landlord's use (the "Notice"), and the subject of this dispute, was given to the Tenants by registered mail. The Notice states that the Landlord will occupy the unit. Attached with the Notice was the explanation that the Landlord's house would be renovated over a period of 6 months and the Landlords intended to move into the unit until their renovations were completed.

The Landlord states that his wife, daughter and parents will live in the unit with him while the renovation to his 4 bedroom 5,000 square foot home is being completed. The Landlord states that his home must be empty while the renovations take place. The Landlord states that alternative accommodations such as a hotel for 6 people would be patently unreasonable and that no other alternatives have been considered. The Landlord states that they only own their own home and the rental.

The Landlord states that the roof over the master bedroom will be removed, the main floor kitchen will be extended and an additional second kitchen and guest suite will be added to the upper floor. The Landlord states that there is currently no second kitchen in their home. The Landlord states that both the disturbance caused by the renovations and hazardous materials will render the home unfit to live in while being completed. The Landlord states that there is no detailed timeline for the construction and expects the roof will be removed first followed by a structural assessment by the architect before proceedings further.

The Tenant submits that the Landlord had made it known from the beginning of the tenancy that the unit, which the Tenant indicates has an assessed value of \$90,300.00, would ultimately be demolished. The Tenant states that in the summer of 2015 the Landlord replaced the roof of the rental unit. The Tenant argues that this repair indicates that the Landlord decided it was not worth redeveloping and instead of demolition would continue to rent the unit.

On August 31, 2015 the Tenants were informed that due to the "hot rental market" and as the rental unit was well below market rate the Landlord wanted an increased rental amount of \$3,600.00 per month. After the Tenants refused and on September 28, 2015 the Landlord served the Tenants with a notice to end tenancy for landlord's use. The reason stated on the notice was that the Landlord would either demolish the unit or renovate the unit. Attached to this notice was permit for three plumbing fixtures. The Tenant states that they were unaware of any problems with any plumbing fixtures and nobody had been out to inspect any plumbing fixtures. The Tenant states that despite

seeking clarification from the Landlord no further explanation was provided to the Tenants. The Tenant states that this notice was disputed and I note that the application for dispute of this notice was made on October 16, 2015.

On October 28, 2015 the Landlord served a second notice to end tenancy indicating that the unit would be occupied by the Landlord. The Tenants states that no further information was provided to the Tenants. Both of these notices were disputed by the Tenants and were subsequently withdrawn by the Landlord at the hearing held on December 16, 2015, with a Decision issued the same day. The Tenant states that no explanation was provided to the Tenants for the reasons for the withdrawal or of any future plans of the Landlord in relation to the unit.

The Tenant argues that the Landlord's intention is to end the tenancy in order to obtain significantly more rent. The Tenant states that the Landlords had a rental agent act for them for the issuance of the first two notices and questions the need for a rental agent if the Landlord's intention was not to rent the unit again. The Landlord states that the rental agent was contracted in September 2015 to assist the Tenants to find another rental unit. The Tenant states that this agent never contacted the Tenants at all at any stage to offer any assistance with their housing. The Tenant states that this agent did not communicate with the Tenants in between the issuance of the first and second notice.

The Tenant states that the Landlord has never been clear and has been inconsistent with both their past actions and statements. The Tenant states that they suggested back in November 2015 that the Landlord obtain help from their daughter who speaks English.

The Tenant states that the unit has been extensively adjusted to accommodate Tenant DC's disability. The Tenant states that given the needs of the Tenants to accommodate the disability, rental accommodations are difficult to find. The Tenant states that if they are required to move out of the unit they need more time to obtain another rental. The

Tenant states that the Landlord has refused to accept rent for May 2016. The Landlord states that this rent was not accepted as it would constitute reinstatement of the tenancy.

The Landlord states that the 1st notice was given because the Tenants had indicated that plumbing fixtures were leaking. The Landlord states that they also thought that “one day” the Landlord would occupy the unit so they wanted to fix the plumbing sooner than later. The Tenant states that nothing was wrong with the plumbing other than having a sluggish sewer system that required draining on three occasions.

The Landlord states that they did not respond to the Tenant about their intention for the 1st notice because the one Landlord is not confident about the use of English so they retained legal counsel. The Landlord states that once they understood that the tenancy could not end for the plumbing they changed the reason to end the tenancy. The Landlord states that their rental agent did speak English but was not confident to deal with the Tenants as the agent was put under undue pressure by the Tenants. The Landlord states that communications with the Tenants has not been adequate due to the Landlord’s limited use of English. The Landlord confirms that their 20 year old daughter speaks English.

The Landlord states that while construction has not started on their residence, and although the permit, issued March 2016, does not expire until September 2017, a city bylaw requires construction to start within 6 months of the issuance of the permit or it becomes void. The Landlord states that they applied for the renovation permit on October 19, 2015. The Landlord states that they have not decided what to do with the rental unit once their renovations are completed. The Landlord states that they may sell the unit or a family member may move into it. The Landlord states further that they intend to have their parents live in the rental property.

Analysis

Section 49 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. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

While it may be that the Landlord intends to renovate its home, I find it curious that the Landlord applied for a renovation permit to their home a few days after the Tenant applied to dispute the 1st eviction notice. I find this particularly curious since the Landlord's evidence indicates that the intention at the time of giving the Tenants the 1st notice was to live in the unit was "one day". There is little evidence to support the need for the Landlord's house to be vacant other than the statement of the need and an assertion of hazardous materials without detail. While the Landlord argues that there are timelines that must be met in relation to the permit, the Landlord also states that there are no timelines for the construction other than to start first with the roof that only covers one bedroom. I do not accept the Landlord's evidence that the rental agent was hired for the Tenants' benefit as I find the Tenant's evidence that the agent did not communicate with the Tenants to be persuasive. Given the apparent ability of the Landlord to obtain a translator if necessary and considering that a family member speaks English, I do not accept the Landlord's evidence of limited use of English as a valid reason for not communicating the reasons for the first two notices or of the Landlord's intentions following the withdrawal of those notices. I find this reason to be convenient. Finally the Landlord's evidence about the use of the rental unit after their house renovations are completed is vague and inconsistent. Overall I prefer the Tenant's evidence.

For these reasons, given the evidence of the Landlord's desire for significantly greater rental income and considering the evidence of two apparently baseless notices to end tenancy, I find there is sufficient evidence on a balance of probabilities to cast doubt on the good faith intention of the Landlord. I find it more likely that the Landlord is seeking

to end this tenancy in order to obtain a greater rental income than having a need or desire to renovate its own home or to have to move out of its home during renovations. I find therefore that the Notice is not valid. The Tenants are entitled to a cancellation of the Notice and the tenancy continues.

As the Tenants' application has been successful I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. 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 13, 2016

Residential Tenancy Branch