



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, MNDC, PSF, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the Two month Notice to End Tenancy dated April 29, 2016
- b. A monetary order in the sum of \$473.10.
- c. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. An order to reduce rent for repairs, services or facilities agreed upon but not provided.
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was served on the Tenant by posting on April 29, 2016. The tenant testified he did not receive it until May 1, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on May 13, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 2 month Notice to End Tenancy dated April 29, 2016?
- b. Whether the Tenant is entitled to a monetary order and if so how much?

- c. Whether the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided.
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 9, 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$700 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$350 on May 9, 2009.

Grounds for Termination:

The Notice to End Tenancy relies on the following:

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

Policy Guideline #2 includes the following:

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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

Briefly, the landlord testified as follows:

- The landlord needs the rental unit for use as by a caretaker that has been hired by the landlord. The caretaker was present at the hearing.
- The landlord purchased the property with possession taking place on November 1, 2014.
- There are 10 rental units in the building. At the time the building was purchased 5 of the rental units were vacant. The landlord renovated the vacant units and rented them.
- At the time the landlord purchased the rental unit they did not expect that they would need an onsite caretaker. However, they have discovered that the cost of maintenance is significant and that the presence of a caretaker that can carry out those duties was warranted. The cost of maintenance and repairs has increased steadily and significantly. The landlord did not know the age of the building. The tenant testified it was constructed in 1932.
- The landlord hired Landlord's Witness #1 to act as the caretaker. He presently lives in Vancouver but not in the area. He wishes to move into the rental property. He has carried out maintenance in the building since October 2015 and is highly skilled and qualified to act as the new caretaker.
- The rental unit is appropriate to be used as a caretaker suite for the following reasons:
 - It is the most centrally located suite in the building
 - It is on the main floor
 - It is central to the tenant's access and would allow the manager to hear the comings and goings of the buildings including any disruptions.
 - It has windows that look out to the back of the building
- The suite that was previously used as a caretaker unit was a 2 bedroom suite in the basement. The temperature controls for the whole building were located in that suite. However, the landlord has since removed the temperature control for the building and installed an automatic temperature sensor outside the building. That unit is no longer appropriate.
- The 5 vacant rental units were renovated and rented. The landlord wanted to increase the rent for the other 5 units including the tenants and made an application for an additional rent increase to the Residential Tenancy Branch.
- The landlord soon recognized that it was difficult to successfully obtain a rent increase and it withdrew its Residential Tenancy Branch application after the tenants disputed the rent increase.

- In November 2015 the landlord served a 2 month Notice to End Tenancy on the Tenant. The tenant disputed the Notice. The landlord withdrew the Notice prior to the hearing on January 29, 2016 as the individual who the landlord had hired for that position had to move to Calgary on short notice due to a family emergency.
- The landlord has attempted to reach a settlement with the tenant and other tenants with respect to them relocating. However, they were not able to reach an agreement with any of the Tenants.
- The tenant relies on a 2 month Notice to End Tenancy given by the previous owner in October 2014 as evidence of bad faith. He also states that two other tenants were evicted by the previous owners. The landlord states this is not relevant and our goal to place a caretaker in the building.

The tenant disputes much of the landlord's testimony as testified as follows:

- The tenant submits the landlord is not acting in good faith.
- This is the third attempt to evict or increase rent on the 4 residences by 70% since August 2016.
- The landlord has had multiple opportunities to install a manager in a vacant apartment but has chose to rent the apartments for fixed term lease.
- The tenant gave evidence there are three apartments better suited first floor on the ground floor.
- The landlord will not address deficiencies and normal maintenance unless forced to do so.
- After no maintenance or free maintenance from tenants, the tenants in unit 10 are contracted to perform basic maintenance following an arbitration hearing on January 29, 2016 in which the landlord was ordered to make repairs.
- The tenant disputes the testimony of the landlord that his suite is the most suited as a caretaker's suite particulars include:
 - .His unit does not overlook the garbage bins at the back
 - Trees and shrubs restrict the view
 - It is not possible to see the front door from the proposed caretaker's suite as the fire doors are closed.
- The tenant testified the actions of the previous owners in serving a 2 month Notice to End Tenancy on one of the tenants for landlord's use of the property and in evicting other tenants including a previous caretaker is evidence of bad faith.
- The landlord should have been aware of the maintenance costs they would be facing when dealing with a building that was constructed in 1932.
- The summary of the landlord is misleading in many material respects including:

- The landlord did not voluntarily withdraw their rent increase application but only withdrew it after the tenants' applied to oppose it.
 - The maintenance costs for the most part relate to costs related to the renovations.
- The original caretaker's apartment is unit #9.
- My tenancy agreement provides that cable is included. The previous landlord included cable. The cost of basic cable is \$24.90 per month. The claim for the loss of cablevision is \$473.10.
- The landlord hired an agent to attempt to negotiate a settlement with all of the tenants to have them vacate. During that meeting the agent represented that the landlord wants to increase the rent for all units. The tenant produced a summary of notes which he made from that meeting. The agent said the landlord is trying to raise all of the rents in the building.
- The tenant's Witness #1 testified he was at the meeting with the landlord's agent and he confirmed the settlement discussion and that the respective tenants and the landlord were not able to reach a settlement.

Analysis:

After carefully considering all of the evidence I determined the landlord has a "good faith intention" to retake possession of the rental unit to give it to a caretaker for the following reasons:

- The landlord has hired a person to act as the caretaker.
- The person hired is qualified and has taken care of maintenance of the rental property since October 2015. He lives in Vancouver at the present time. It is reasonable that the landlord would want a caretaker to live in the rental property.
- I accept the testimony of the landlord that there is a need for an onsite caretaker given the maintenance costs rising. The building was constructed in 1932. There is evidence from the tenant there are maintenance issues with the building. .
- I accept the testimony that an onsite caretaker would reduce the costs in this in maintaining this property and would provide better service to the tenants..
- I am satisfied that the tenant's unit is appropriate for use of a caretaker.
- The tenant alleged the landlord has the ulterior motive of raising rents. There is no proof that the caretaker will be paying a rent higher than the Tenant.
- I do not accept the submission of the Tenant that the conduct of the previous owner in serving Notices is evidence of bad faith of this landlord.
- There are only 10 rental units in the building. Presently there are no vacant rental units. The building has been full since the renovations were completed after the landlord took possession. I am satisfied that at the time the landlord

rented these units out it did not consider it necessary to have an on site caretaker.

- The landlord has a legal right to end a tenancy to provide the rental unit to a caretaker provided the landlord is acting in good faith. There is insufficient evidence this tenant has been unfairly singled out to facilitate this decision or there is an ulterior motive.
- I do not accept the submissions of the tenant that the conversation of the landlord's agent and/or the landlord when trying to reach a settlement with the tenants is evidence of bad faith. Settlement discussions are seen by the law as being "without prejudice." There is nothing wrong with a party (landlord or tenant) trying to reach a settlement with the other party. Settlement discussions where a landlord offers significant financial incentives to a Tenant is not evidence of bad faith.

In summary I determined the landlord has a good faith intention to use the rental unit as a caretaker's unit. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy.

However, the landlord served the two month Notice to End Tenancy on April 29, 2016. The tenant testified he did not receive it until May 1, 2016. The Residential Tenancy Act provides that the landlord must give the tenant 2 clear months notice. The Act self corrects an end of tenancy date where this has not occurred. Thus the end of tenancy date is July 31, 2016.

I order that the tenancy shall end on July 31, 2016.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective July 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Monetary Order:

I determined the tenancy agreement provided that the tenant was entitled to cablevision. I accept the evidence presented by the Tenant and I determined the Tenant is entitled to a monetary order in the sum of \$473.10. I ordered that the

Landlord pay to the Tenant the sum of \$473.10 plus \$100 for the cost of the filing fee for a total of \$573.10.

I dismissed the claims that the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or law and the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided as either the tenant failed to present sufficient evidence to establish such a claim or they had merged with the Tenant's monetary claim.

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: June 17, 2016

Residential Tenancy Branch