



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, DRI, MNDC, OLC, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to dispute an additional rent increase; for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, for orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession based upon the 2 Month Notice. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated issues contained in a single application. The tenants indicated several matters of dispute on their Application for Dispute Resolution. I confirmed that the most urgent issue to resolve was the fate of the tenancy given the issuance of a Notice to End Tenancy. The majority of the hearing time was spent hearing the parties' respective positions concerning the Notice to End Tenancy. Accordingly, I have not resolved the other issues identified on the tenants' application and those issues are dismissed with leave to reapply.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 31, 2016 be upheld or cancelled?

Background and Evidence

The tenancy commenced in 2011. The tenants occupy the basement suite and the landlord and his family reside in the unit above. I was provided conflicting testimony as to the amount of the monthly rent and I have reflected the parties' testimony concerning rent later in this decision. On July 19, 2016 the parties participated in a previous dispute resolution proceeding. That proceeding dealt with a tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 2 Month Notice to End Tenancy for Landlord's Use of Property and a landlord's application for an Order of Possession based upon those Notices (file numbers are

provided on cover page of this decision). The tenants were successful in that proceeding and both Notices were cancelled.

On July 31, 2016 the landlord posted a 2 Month Notice to End Tenancy for Landlord's Use of Property on the door of the rental unit. The 2 Month Notice has a stated effective date of September 30, 2016 and indicates the reasons for ending the tenancy is because: "The rental unit will be occupied by the landlord or the landlord's close family member". The tenant filed to dispute the 2 Month Notice within the time limit for doing so and that Notice is the subject of the applications before me.

As for the reason(s) the landlord issued the 2 Month Notice on July 31, 2016 the landlord testified that his parents intend to occupy the rental unit so that the landlord has more space to accommodate his family upstairs. The landlord described the upper unit as having three bedrooms and currently one bedroom is occupied by the landlord and his wife and their two year old child; one bedroom is occupied by the landlord's parents, and the third bedroom is shared by the landlord's two other children. The landlord submitted that his oldest child is now a teenager and is in need of his own bedroom. The landlord testified that his parents have lived with him and his family since 2004 and they intend to stay together in the same house. The landlord provided an affidavit signed by his parents indicating their intention to move into the rental unit so as to remain close to the landlord for his love and support and to provide more space on the upper floor for the landlord's children.

The tenant submitted that this 2 Month Notice was issued shortly after the previous dispute resolution hearing where the Arbitrator found that the landlord issued a 10 Day Notice and a 2 Month Notice without basis and with an ulterior motive. The tenant stated that the situation has not changed since July 19, 2016 and this is merely attempt by the landlord to end the tenancy so that he can significantly increase the rent.

Near the beginning of the hearing, I had asked the landlord to provide me with the amount of the monthly rent for the rental unit. The landlord slightly hesitated before stating \$935.00.

The tenant testified that the monthly rent was initially set at \$900.00 and the tenant requested two specialty cable channels and had been paying the landlord \$35.00 bringing the total monthly payment to \$935.00 up until January 2015 when the landlord increased the monthly payment by \$40.00 to \$975.00 starting February 2015. The tenant testified that they have been paying \$975.00 every month since then. The tenant testified that they had been paying rent in cash and the landlord had not been issuing rent receipts; however, since the previous dispute resolution proceeding of July 19, 2016 the tenants have been paying by cheque and the landlord has been issuing receipts. The tenant further testified that in January 2016 the landlord sought to increase the monthly rent by another \$200.00 but the tenant refused to pay such an increase. The tenants are of the position that in refusing to pay the \$200.00 rent increase is the point when the dispute between the parties began as it had been relatively uneventful up until that point.

After hearing the tenant's testimony, the landlord acknowledged that he had been collecting \$975.00 from the tenants but claims that it did not start until February 2016. The landlord testified that in January 2016 he approached the tenant about increasing the rent and that he left it up to the tenants to decide how much of an increase they could afford and the tenants' indicated that they could afford an additional \$40.00 per month. The landlord denied that he sought to increase the rent an additional \$200.00 per month.

Both parties provided testimony that points to a tenancy relationship that has deteriorated significantly in recent months. For instance, the tenant submitted that the landlord is withholding his mail, interfering with the internet service, and the landlord called the police to make false allegations that the tenant was trying to burn the house down. The tenant was also of the position the landlord and his family are purposely being loud so as to disturb the tenants intentionally. In short, the tenant submitted that the landlord is trying to make the living situation difficult and unpleasant so that they move out. The landlord denied withholding the tenants' mail and explained he had a basis to call the police because the tenant had kicked the door. The landlord also submitted that it was the tenant who called police alleging the landlord was withholding his mail and the landlord showed to the police that he was not. The landlord also stated that his children are afraid of the tenant as he yells and bangs around if they are too loud playing.

Analysis

In hearing from the parties it is obvious that this tenancy has deteriorated significantly and that is especially unfortunate given their close proximity to each other. Nevertheless, the tenants confirmed that they intend to remain in the rental unit until such time other affordable housing becomes available to them. Accordingly, I proceed to determine whether the 2 Month Notice dated July 31, 2016 should be upheld or cancelled.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The 2 Month Notice before me is consistent with a notice a landlord may serve under section 49 of the Act. As provided under section 49 of the Act, where a landlord seeks to end the tenancy so that the rental unit may be occupied by the landlord or the landlord's close family member the landlord must do so with a good faith intention. Residential Tenancy Branch Policy Guideline 2: *Good Faith Intention* provides policy statements with respect to the good faith intention. The policy guideline provides, in part:

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:

- a 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.

The landlord argued that the three bedroom space occupied by seven members of his family has become too small as the children grow up. I accept that position sounds reasonable. However, I find the tenant has called into question the landlord's good faith intention considering the 2 Month Notice was issued shortly after the landlord was unsuccessful in having the previous Notices to End Tenancy upheld and the tenant pointed to an ulterior motive which is to raise the rent significantly.

Although the landlord denied that he sought to increase the rent by \$200.00 per month as alleged by the tenants, I find the landlord to be less credible than the tenant. I make this finding considering the landlord provided inconsistent testimony as to the current monthly rent: initially testifying that the monthly rent is \$935.00 and later acknowledging that he has been collecting \$975.00. Further, I found the landlord's testimony that he left the rent increase of \$40.00 entirely up to the tenants to decide to be very unlikely.

I also note that the tenant provided testimony concerning the increased rent of \$975.00 and the landlord's attempts to increase the rent a further \$200.00 consistently during the hearing and consistent with the testimony he provided in the previous dispute resolution proceeding.

Having found the tenant more credible than the landlord I accept the tenant's version of events that they have been paying \$975.00 since February 2015 and the landlord sought to increase the rent a further \$200.00 in January 2016. Given the tenants' refusal to pay such an increase, I accept the tenants' position that the landlord issued the 2 Month Notice with an ulterior motive. I note that the Arbitrator considering the previous 2 Month Notice made the same finding and I find that the 2 Month Notice issued shortly thereafter on July 31, 2016 was done so that the landlord could gather more evidence since the previous Arbitrator noted that there was no evidence from the landlord's parents.

In light of the above, I grant the tenants' request to cancel the 2 Month Notice dated July 31, 2016 with the effect that this tenancy continues. Accordingly, the landlord's application is dismissed.

With a view to avoiding future disputes, I provide the parties with information below to consider.

- A landlord may not unreasonably disturb a tenant, or stand idly by while others do, or otherwise violate the Act with a view to constructively evict a tenant and such actions may be grounds for the tenant to seek orders and monetary compensation against the landlords.
- As for rent increases, the Act provides that where rent has been illegally increased the tenant may recover the overpayments by withholding rent. That remedy remains available for these tenants and should the tenants seek a Monetary Order for any overpaid rent the tenants are at liberty to do so by filing another application.
- The Act and Regulations do provide a mechanism for a landlord to increase the monthly rent by more than the annual allowable increase in certain circumstances, including where: "the rent for the rental unit is significantly lower than the rent payable for other rental units that are similar to, and in the same geographic area as the rental unit" and the landlord remains at liberty to pursue such a remedy as appropriate.
- The Residential Tenancy Branch provides information concerning the rights and obligations of landlords and tenants on the website located at: www.gov.bc.ca/landlordtenant and/or by contacting an Information Officer. The parties are strongly encouraged to familiarize themselves with the Act and Regulations and act accordingly.

Conclusion

The 2 Month Notice to End Tenancy dated July 31, 2016 is cancelled and the tenancy continues at this time.

The other remedies sought by the tenants are dismissed with leave to reapply.

The landlord's application is 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: October 06, 2016

Residential Tenancy Branch