



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MT, RP, and FF

Introduction

On August 25, 2016 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to make repairs to the rental unit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 30, 2016 the Application for Dispute Resolution, the Notice of Hearing, and one letter dated July 25, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 07, 2016 the Tenant filed an Amendment to an Application for Dispute Resolution in which the Tenant applied to cancel a Two Month Notice to End Tenancy and for more time to make that application. The Tenant stated that on October 07, 2016 the Amendment to an Application for Dispute Resolution was sent to the Landlord, via registered mail. The Advocate for the Tenant stated that the Canada Post website shows this package was delivered on October 18, 2016.

The Landlord stated that he did not receive the Amendment to an Application for Dispute Resolution. The Landlord was advised that the Tenant had amended his original Application for Dispute Resolution to include an application to cancel a Two Month Notice to End Tenancy and for more time to apply to cancel that Notice to End Tenancy.

The Landlord was given the opportunity to have the hearing adjourned if he needed more time to consider the Tenant's application to cancel a Two Month Notice to End Tenancy and for more time to apply to cancel that Notice to End Tenancy. The Landlord declined the opportunity for an adjournment and declared that he was prepared to respond to the Tenant's application to cancel the Two Month Notice to End Tenancy at the hearing on October 19, 2016.

On October 07, 2016 the Tenant submitted four pages of evidence to the Residential Tenancy Branch, which included a copy of the Two Month Notice to End Tenancy, a letter dated August 04, 2016, and a fax cover sheet. The Tenant stated that this evidence was mailed to the Landlord on October 07, 2016, with the Amendment to the Application for Dispute Resolution.

The Landlord stated that he received the package that the Tenant mailed on October 07, 2016 but it only included a copy of the Two Month Notice to End Tenancy that is the subject of these proceedings. As the Landlord acknowledged receipt of this document, it was accepted as evidence for these proceedings.

The Landlord stated that he did not receive a copy of the letter dated August 04, 2016 in the package mailed to him by the Tenant on October 07, 2016; however he submitted a copy of that letter in his evidence package. As the Landlord has a copy of this letter in his possession, it was accepted as evidence for these proceedings.

The Landlord stated that he did not receive a copy of the fax cover sheet in the package mailed to him by the Tenant on October 07, 2016. As this cover sheet is not particularly relevant to the issues in dispute and the Landlord does not acknowledge receiving this document, it was not accepted as evidence for these proceedings.

On October 07, 2016 the Landlord submitted one envelope that has been sent by registered mail and returned to the sender, a photocopy of the front and back of that envelope, one Canada Post receipt, a copy of the aforementioned letter dated August 04, 2016; and a copy of the Two Month Notice to End Tenancy that is the subject of these proceedings. The Landlord stated that this evidence was sent to the Tenant, via regular mail, on October 05, 2016.

The Tenant stated that he did not receive the evidence package that the Landlord allegedly mailed on October 05, 2016. I note that the letter dated August 04, 2016 and a copy of the Two Month Notice to End Tenancy that is the subject of these proceedings which were submitted to the Residential Tenancy Branch by the Landlord on October 07, 2016 has already been accepted as evidence for these proceedings.

The Tenant was advised that the Landlord had also submitted one envelope that has been sent by registered mail and returned to the sender plus documents related to that envelope. The Tenant was given the opportunity to have the hearing adjourned for the purposes of having this evidence re-served to him. The Tenant declined the opportunity for an adjournment and consented to this evidence being accepted as evidence for these proceedings on the basis of my description of the evidence. I note that this evidence is not highly relevant to my decision in this matter.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should a Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

Should the Tenant be granted more time to apply to set aside a Notice to End Tenancy?

Should the Landlord be ordered to make repairs to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2010; that the current monthly rent is \$350.00; and that rent is due by the first day of each month.

The Landlord stated that on August 05, 2016 he sent a Two Month Notice to End Tenancy, dated August 05, 2016, to the Tenant, via registered mail. He stated that the mail was returned to him by Canada Post sometime in September of 2016. The Tenant stated that he did not receive notice from Canada Post regarding this registered mail and that he did not receive the registered mail.

The Landlord stated that on October 05, 2016 he mailed a copy of the same Two Month Notice to End Tenancy, dated August 05, 2016, to the Tenant. The Tenant stated that he received this Two Month Notice to End Tenancy on October 07, 2016.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy dated August 05, 2016 declares that the Landlord is ending the tenancy because the Landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate, or repair the rental unit in a manner that requires the rental unit to be vacant.

In support of the Two Month Notice to End Tenancy the Landlord stated that:

- he intends to convert this two bedroom residential complex into a single family dwelling;
- once it is converted to a single family dwelling he will attempt to sell it;
- he intends to replace "everything" in the lower unit except for the kitchen;
- he does not intend to begin renovating the lower unit until the upper rental unit is vacant and he has the money to renovate the entire house at the same time;
- he cannot currently afford to renovate the rental unit;
- he anticipates the renovations will start in approximately one year;
- he will leave the lower rental unit vacant until such time as he begins renovating the entire unit; and

- he is not willing to allow the Tenant to remain in the rental unit until he is ready to start the renovations because the Tenant leaves his window open, which uses an excessive amount of electricity.

The Tenant is seeking an Order requiring the Landlord to finish the windows in the rental unit, which includes finishing the drywall around the windows and installing window sills; to re-paint the rental unit; and to replace the living room carpet.

The Landlord and the Tenant agree that the Landlord has never promised to complete any of the requested repairs. The Tenant stated that he is not aware of any legal reason why the Landlord should complete the repairs.

Analysis

On the basis of the undisputed evidence I find that:

- on August 05, 2016 the Landlord mailed a Two Month Notice to End Tenancy, dated August 05, 2016, to the Tenant, via registered mail;
- the Tenant did not receive notice from Canada Post that registered mail had been sent to him; and
- the Tenant did not receive the Two Month Notice to End Tenancy that was mailed on August 05, 2016.

I find it entirely possible that both parties are telling the truth regarding the Two Month Notice to End Tenancy that was mailed on August 05, 2016, as the notice of registered mail may have been lost or incorrectly delivered by Canada Post.

On the basis of the undisputed evidence I find that the Landlord mailed a second copy of the Two Month Notice to End Tenancy, dated August 05, 2016, to the Tenant on October 05, 2016 and that the Tenant received this Notice, for the first time, on October 07, 2016. As the Tenant applied to set aside the Two Month Notice to End Tenancy on October 07, 2016, I find there is no need to consider the Tenant's application for more time to apply to set aside this Notice.

Section 49(6)(b) of the *Residential Tenancy Act (Act)* allows a landlord to end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

I find that the Landlord has submitted insufficient evidence to show that he has plans to renovate the rental unit in the immediate future. While I accept that the Landlord may have plans to renovate the rental unit in the future, I find that his attempt to end this tenancy on the basis of those plans is premature.

I therefore grant the Tenant's application to set aside the Two Month Notice to End Tenancy that is dated August 05, 2016. The Landlord retains the right to serve the

Tenant with another Two Month Notice to End Tenancy once he has concrete plans to renovate the unit and he has obtained all the permits required to complete his planned renovation.

In setting aside this Two Month Notice to End Tenancy I was heavily influenced by the issue of “good faith”. Good faith is an abstract and intangible concept that involves honest intent and the absence of malice, with no ulterior motive.

Although I accept that the Landlord may renovate the rental unit sometime in the future, providing he is able to find money to finance the renovation, I find that he has an ulterior motive for ending the tenancy at this time. This conclusion was heavily influenced by the Landlord’s testimony that he does not want the Tenant to remain in the rental unit until the renovations begin because the Tenant is using an excessive amount of electricity. I find that the perceived excessive use of electricity is the primary factor for attempting to end the tenancy at this point and I therefore cannot conclude that this Two Month Notice to End Tenancy was served in good faith.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Tenant has submitted insufficient evidence that the rental unit is not being maintained in a manner that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I specifically note that the Tenant has submitted no evidence to show that the rental unit does not comply with building standards.

In circumstances where a landlord has promised to make repairs to a rental unit as a term of the tenancy agreement, the landlord is obligated to make those repairs even if the repairs are not required by health, safety, or housing standards. The undisputed evidence is that the Landlord has not promised to complete any of the repairs being requested by the Tenant and I therefore dismiss the Tenant’s application for an Order requiring the Landlord to make repairs.

I find that the Tenant’s Application for Dispute Resolution has merit and that he is entitled to compensation of \$100.00 for the cost of filing this Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy, dated August 05, 2016, has been set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$100.00 for the fee paid to file this Application for Dispute Resolution and I grant him a monetary Order for \$100.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord,

filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

The Tenant has the option, pursuant to section 72(2)(a) of the *Act*, of collecting this \$100.00 by deducting it from any rent due to the Landlord.

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 19, 2016

Residential Tenancy Branch