



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, MNDC, OLC, OPT

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use; limiting the landlord's right of entry; compelling the landlord to comply with the Act, regulation or tenancy agreement; granting the tenant an order of possession; and a monetary order. Both parties appeared. Both sides had received the other party's evidence package and both parties gave affirmed evidence.

Pursuant to Rule 2.3 and 6.5 of the *Residential Tenancy Branch Rules of Procedure* which provide that claims made in an application for dispute resolution must be related to each other and that, if they are not, arbitrators may dismiss some of the claims with or without leave to re-apply, I dismissed the claim for a monetary order with leave to re-apply.

Issue(s) to be Decided

- Is the 2 Month Notice to End Tenancy for Landlord's Use dated August 16, 2016 valid?
- Should an order limiting the landlord's right of entry be limited and, if so, on what terms?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence

This tenancy commenced January 1, 2013 as a one-year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$1050.00 is due on the first day of the month. The tenants paid a security deposit of \$525.00.

The tenancy agreement was between the previous owner of the property, the applicant MB, and another tenant, SC. On the tenancy agreement the rental unit is described as the civic address. There are no limiting words such as "upper floor" or "not including garage".

The rental unit is single family home. There are two bedrooms upstairs. The only kitchen and full bathroom are also upstairs. The basement is largely unfinished – concrete floors and walls – but some drywall partitions have been erected creating some separate spaces. There is a water closet containing only a toilet in the basement.

MB testified that she and SC rented the entire house and yard. They were never told by the landlord that the basement could not be used for sleeping or for other activities. The drywall partitions were in place when they moved in. The only change they have made to the basement is to paint the walls.

MB testified that SC's boyfriend lived with them. SC and her boyfriend used the basement as their bedroom/living room area. On October 1, 2013 MB's boyfriend, the other applicant on this application for dispute resolution, moved in with her. They used the upstairs bedroom and living room. The two couples shared the kitchen, bathroom and laundry and split the expenses of the house four ways.

SC and her boyfriend moved out October 1, 2014. No change to the tenancy agreement was made.

Since then, MB and her boyfriend have had a succession of roommates. Those roommates have generally used the lower level as their bedroom and living room space, and shared the kitchen, bathroom and laundry with MB and her boyfriend. However, some roommates have used the second upstairs bedroom and in hot weather everyone uses the downstairs as the communal living room.

MB testified that the previous landlord knew they had roommates and never objected.

In the spring of 2016 the previous landlord put the property up for sale. He accepted an offer from the landlord in July and the closing date was August 15. The offer did not include a request for vacant possession.

The landlord's real estate agent testified that the landlord knew the property was tenanted and intended to keep the property as a rental unit. This was the information conveyed to the tenant and her roommate in communications from the previous landlord and the selling agent.

The landlord sent the selling agent an e-mail, which was forwarded to the roommate, saying he needed a meeting with the tenant as soon as possible before the completion date. The e-mail ended with "P/s: the tenant agreement will be continue . . .".

Further to an agreement made the previous day the landlord and his real estate agent inspected the property on August 8. The roommate showed them all around the property including the basement and the yard. At the end of the inspection the roommate asked if they would be able to keep renting the property to which the landlord replied yes.

The landlord and the agent asked the tenant for a meeting to sign a new tenancy agreement. In the course of a text message exchange about the meeting the roommate stated that he had been checking the laws and a new tenancy agreement was not required. The response was: "U do not want to meet with the seller. U may not live this property any more."

On August 15 the purchaser and his agent came to the rental unit and presented the tenant with a new tenancy agreement. This agreement specified that the rental unit was the main floor only and left the rent at the same amount. The tenant and the roommate took the position that if the size of the rental unit was to be cut in half, so should the rent. The landlord and his agent said that "if you don't sign the agreement you will be evicted" and left.

The next day the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on the grounds that he or a close family member intended to occupy the rental unit. It was sent to the tenant by registered mail.

On August 20 the landlord came to the house without having given notice and started putting stuff into the garage and basement. There was an incident between the landlord and the roommate. At the end of it the roommate called the police. The landlord has not been to the rental unit since.

The agent for the landlord argued that:

- At the time the sale contract was signed the former landlord said the tenants only had the right to occupy the upper level.
- The lower level has not been permitted for residence by the municipality. In support of this statement the landlord filed a copy of the real estate listing which states that the house has an unfinished basement and no suite. Nothing from the municipality.
- The renovation to the basement was illegal and the landlord will have to restore it to an unfinished condition to comply with municipal regulations. No copies of applicable municipal regulations or a municipal order were filed in support of this statement.

- Based upon the list of required repairs prepared by the tenant and the roommate, which include mold in the basement water closet, a crack in the laundry room window and a flickering light; the basement is not suitable for human habitation.
- The tenant has created an illegal sub-tenancy by allowing roommates to stay in the basement.
- The home insurance does not cover the basement.

In his oral testimony the agent testified that when the landlord bought this property he intended to keep it as a rental unit but when he realized there were so many problems with this tenancy – illegal sub-letting, the tenant's demands for a rent reduction; the tenant's refusal to sign the tenancy agreement they presented, some maintenance issues and no insurance coverage for the basement – he decided to take possession of the rental unit.

The real estate agent also testified that the landlord intends to live in the unit with his wife and child.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

When a property is sold the buyer assumes the rights and responsibilities of the seller pursuant to the existing tenancy agreement and the tenancy continues on the same terms. Legally, the buyer and the tenants do not have to sign a new tenancy agreement but they may do so if both agree.

The tenancy agreement itself governs the terms between the landlord and the tenant. This agreement does not limit the rental unit to only the upper level of this house. From the description of the rental unit in the agreement it is clear that the rental unit is the whole house, the garage, the yard, and any outbuildings that may be located on the property.

The tenancy agreement was originally with two co-tenants. As explained in *Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-Tenants*, where co-tenants have entered into a periodic tenancy, and one or more tenants move out without giving notice to the landlord the tenancy continues with the existing tenants. So after SC moved out, the tenancy continued between the previous landlord and MB as the sole tenant.

Also as explained in *Guideline 13*, where a tenant allows a person who is not a tenant (in other words, someone who is not named as a tenant on the tenancy agreement) to move into the premises and share the rent that person is merely an occupant, with no rights or obligations under the tenancy agreement

The tenancy agreement does not limit the number of occupants there may be in the rental unit, so the tenancy agreement does not restrict the tenant from having roommates.

Merely bringing in a roommate or roommates is not creating a sub-tenancy because the tenant is only agreeing to share the rental unit with someone else. How the roommates divide the space does not change the basic nature of this agreement.

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline 2: Ending a Tenancy Agreement: Good Faith Requirement defines “good faith” as 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.

The *Guideline* goes on to explain that if the 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 the questions as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The *Guideline* requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for end the tenancy.

In this case I am not convinced that the landlord intends to live in the rental unit himself. First of all I have no evidence from the landlord himself, either in sworn testimony or in a written statement, that he intends to live in this unit. Secondly, the evidence is clear that until the tenant refused to sign the tenancy agreement he presented to her - an agreement that significantly reduced the value of the tenancy agreement and which she was under no legal obligation to accept - he had no intention to live in the unit. As a result it is clear that the landlord has another or ulterior motive for ending this tenancy.

The 2 Month Notice to End Tenancy for Landlord's Use dated August 16, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Further, the landlord is ordered to comply with the terms of the existing tenancy agreement, as set out above.

An order restricting the landlord's right of entry will not be made at this time. Now that the nature of the rental unit and the terms of the tenancy agreement have been defined it may be easier for the parties to comply with the legislation. The landlord is reminded that the *Residential Tenancy Act* sets out the circumstances in which a landlord may enter a rental unit and that the Residential Tenancy Branch has information on this topic for both landlords and tenants. If access is a problem in the future either party may apply for the appropriate order.

As the tenant was successful on the application she is entitled to reimbursement from the landlord of the \$100.00 fee paid to file it. Pursuant to section 72(2) this amount may be deducted from the next rent payment due to the landlord.

Conclusion

The tenant's application is successful. The 2 Month Notice to End Tenancy for Landlord's Use dated August 16, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

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: November 02, 2016

Residential Tenancy Branch

