



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property and to recover the filing fee from the landlord for the cost of this application.

The tenants, the landlord, the landlord's agent and legal counsel (Counsel) for the landlord attended the conference call hearing. The parties provided testimony under oath were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch in advance of this hearing.

Procedural issues - At the outset of the hearing, the matter of each party's evidence was discussed. The landlord agreed receipt of the tenants' evidence; however, Counsel submitted that he gave the landlord's evidence package to the landlord's agent to be served upon the tenants. The landlord's agent testified that he was not given instruction to serve this evidence upon the tenants and the landlord's evidence has therefore not been served.

In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 7 days prior to the hearing. In considering whether to accept the landlord's evidence, I find that the landlord failed to serve evidence to the tenants;

however, I have accepted the portion of the landlord's evidence which was also provided by the tenants, which is the written tenancy agreement and copy of the Two Month Notice to End Tenancy. I have therefore excluded the remainder of the landlord's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the Two Month Notice to End Tenancy?
- If the tenants' application is unsuccessful is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on November 23, 2015 for a fixed term tenancy that is due to end on November 30, 2016 with the option of continuing as a month to month tenancy. Rent for this unit is \$1,400.00 per month, due on the 1st of each month.

Pursuant to the Rules, the landlord proceeded first in the hearing and submitted evidence in support of her Notice.

The landlord testified that she has plans to move into the rental unit and use the entire house for her own occupation and to conduct her photography business from the house. The landlord testified that it is her intention to move in on or about December 16, 2016 as she wants time after the tenants to vacate to get trades people in to do some

renovations to the property. Currently the landlord resides in her own home in Vancouver but her business is a virtual business for which she requires the use of the studio in the lower level of this house. The landlord testified that her house in Vancouver does not have a studio. The landlord's studies in photography are finishing in December and the landlord has already started to create her business profile through social media and other contacts in this town so wishes to live and work from this house.

The landlord testified that she has already made arrangements for people to house sit her Vancouver home and that she has been planning this move for many years. She purchased the house on October 15, 2015 and only rented it for the year to help pay the mortgage before she was ready to move to the area.

The landlord testified that she will also be doing some renovations to the house and has applied for some permits which were issued in September, 2016. The landlord seeks to renovate the master bathroom and change out the shower, tub and sink and replace the lighting. The closet containing the new washer and dryer needs to be built out, the smoke detectors need to be hardwired in, the carpets will be replaced, the kitchen cabinets will be replaced or renovated and the stove will be replaced with a gas stove which involves putting in a gas line. A security system will be installed with external cameras. The landlord testified that not all this work requires building permits.

The landlord testified that she served the tenants with a Two Month Notice to End Tenancy (the Notice) on September 03, 2016 to coincide with the end of their fixed term tenancy. The effective date of the Notice is therefore November 30, 2016. The landlord referred to the copy of the Notice provided in evidence and this Notice shows the following reasons have been given to end the tenancy:

- 1) The rental unit will be occupied by the landlord, or the landlords close family member (parent, spouse or child or the parent or child of that individual's spouse).
- 2) the landlord has all necessary permits or 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.

The landlord therefore seeks that the Notice is upheld and an Order of Possession is issued for November 30, 2016.

The tenants disputed the landlord's Notice. The tenants testified that the Notice is unfair and is just another attempt by the landlord to evict the tenants. The landlord has served the tenant other Notices which have been successfully disputed by the tenants. The tenants testified that the landlord has not issued this Notice in good faith and she simply wants to evict the tenants because of the problems between them caused when the tenants tried to make the landlord bring the unit up to code with the work she was completing.

The tenants testified that they contacted the building inspector and were told the landlord has only filed for building permits for the work already completed in the tenant's unit. The tenants testified that when they signed the lease agreement they had a verbal agreement with the landlord that they could live in the unit for two years as after the first year they had the option of continuing on a month to month basis unless the tenants give notice. The landlord had also informed the tenants that her daughter was in school for two years elsewhere.

The tenants testified that they do believe the landlord may want to come and live in her home but she is rushing this through in order to get the tenants out when she could continue to operate her virtual business from her home in Vancouver. The tenants testified that both the landlord and her agent had spoken to the tenants about the landlords plans to use this house as a rental unit and the tenants believe the landlord may try to re-rent the unit. The landlord was doing some construction work on the lower levels of the house to turn the lower level into a separate rental unit and the tenants believe the landlord may have installed a kitchen and has done work on the bathroom on the lower level with the purpose of turning it into a separate rental unit.

The tenants asked the landlord why her business has to be in town and why is it so time sensitive. The landlord responded that her photo gallery on line shows pictures of the mountains and the landlord takes pictures in the area for her work and to display on her website. This cannot be done by living in Vancouver. The tenants asked if the landlord told them they could live in the unit for two years. The landlord responded no, the lease was for one year. The tenants asked if the landlord plans to rent the unit out again. The landlord responded no, she intends to live in the entire house. She had plans to make a rental unit in the lower level but it was too costly to do the work required. The tenants asked why the landlord is doing renovations now. The landlord responded she is doing renovations for herself for when she moves in. the tenants asked if the landlord thinks that the level of renovations would render the unit unliveable for the tenants but not the landlord. The landlord responded that she can use the lower bathroom when the work is done on the master bathroom and can stay at a friend's house for any other work.

The landlord asked the tenants when they spoke to the building inspector. The tenants responded last week, the building inspector informed them that the permit issued was for the work already completed for \$4,000.00. The landlord asked the tenants if the building inspector told them she was replacing the stove and putting in a gas line. The tenants responded no. The landlord asked the tenants what renovations they thought the landlord had done downstairs as the landlord has only corrected deficiencies that were present when she purchased the house. The tenants responded that they do not know for sure as the landlord locked them out of that level but they did hear her doing renovations in May.

In closing the tenants submitted that they believe this is another attempt by the landlord to evict them. There is very little rental housing on the market and while they understand the landlord has a right to move back into her own home the tenants do not believe her actions are honorable.

Counsel submitted that the Notice was issued in accordance with s. 49 of the *Act* and the tenants have been given more than two months' notice. The tenants believe that s.

4(c) of the tenancy agreement entitles them to unilaterally stay in the rental unit. The break down in the relationship between the tenants and the landlord is not relevant to the Notice being issued but may have led to the landlord not continuing the relationship with the tenants.

In closing the landlord submitted that this past summer instead of being able to stay in the lower levels of her home pursuant to s. 51 of the tenancy agreement the landlord had to stay elsewhere when she should have been there setting up her studio for her business and this has put her timeline behind to start her business in the local area and start showing her work.

The landlord's agent testified that the landlord intends to live in the house and she has given her agent notice to terminate their business relationship as she will no longer be renting. The landlord's agent speaks to the landlord's previous intention to renovate the lower levels to include a legal suite but the cost was beyond her financial capabilities so it is her intention to now occupy the entire house.

Analysis

Section 49(3) of the *Act* stipulates 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. Section 49(6)(c) of the *Act* stipulates that the landlord may 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.

In considering whether the landlord has acted in good faith, a two part test is imposed, namely, that the landlord must truly intend to use the premises for the purposes stated on the Notice to End Tenancy and that the landlord must not have a dishonest or

ulterior motive as the primary motive for seeking to have the tenants vacate the residential premises.

As to the Notice, in the circumstances before me, I find that the landlord has testified that she will be operating her virtual photography business from the unit and has already started to set up her business on social media and will be using the studio in the property for her business. The landlord has also testified that she will be occupying the entire house including the tenants' rental unit for her own use including her business and does not intend to rent out any portion of the house for the foreseeable future.

While I accept that the relationship has deteriorated during this tenancy and the landlord has made other attempts to evict the tenants which were unsuccessful; after hearing the evidence of both parties, I cannot find that the landlord had an ulterior motive in issuing this Notice seeking the end of the tenancy despite the obvious problems between the parties. The landlord's photography studies will conclude in December, her work will take place in the local area and not Vancouver, and she has given her property manager notice to end their relationship as she will not be renting the unit.

With regard to the second reason given on the Notice if the landlord has permits in place to renovate the unit for her own use then this reason is not relevant to ending the tenancy for the tenants if the landlord intends to occupy the unit.

I find the tenants are upset at having to vacate the rental unit but have insufficient evidence to show that the landlord does not intend to occupy the rental unit. The tenants have based their argument on the relationship issues between the parties and a section of the tenancy agreement which they believe entitled them to end the tenancy at their own discretion. The tenancy agreement was for a year and there is insufficient evidence of any further agreement either verbal or in writing to show the intention of the parties was for this to be a two year tenancy.

I therefore find that, upon a balance of probabilities, the landlord has met the burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith.

I therefore dismiss the tenants' application seeking cancellation of the Notice, without leave to reapply.

The landlord and the tenants are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. The tenant may either withhold the last month's rent or if that rent has been paid the landlord must reimburse this amount to the tenants.

The landlord and the tenants are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenants the equivalent of two months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

I refer the parties to section 55(1) of the *Act* which provides that:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the landlord's Notice to End Tenancy does comply with s. 52 of the *Act* and the landlord requested that I uphold the Notice and issue an Order of Possession for the rental unit. The effective date of the Notice is November 30, 2016. As I have dismissed the tenants' application I therefore issue an Order of Possession to the landlord effective on that date.

As the tenants' application is unsuccessful the tenants must bear the cost of filing their application.

Conclusion

For the reasons stated above, the tenants' application is dismissed without leave to reapply.

The landlord has been issued an Order of Possession effective **on November 30, 2016** pursuant to s. 55(1)(b) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia 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: November 16, 2016

Residential Tenancy Branch

