



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("two month notice") pursuant to section 49 of the *Act*.

The tenant and the landlord's nephew and daughter attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord's nephew and daughter (hereinafter known as "the landlords") explained that they were attending and speaking at the hearing because JG and VG, the respondent's named in the Tenant's Application for Dispute Resolution ("Tenant's Application") could not speak in English very well.

At the outset of the hearing, I asked the landlords to explain why the Notice to End Tenancy served on the tenant was issued on an outdated form that appeared to be from 2003. The landlords could not explain the reason this form was used. After having carefully examined the contents of the form that was served on the tenant, the current two month notice and the wording of section 49(6) of the *Act*, I advised the parties that I was satisfied that this form contained sufficient information to have been served on the tenant.

The landlords confirmed receipt of the Tenant's Application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

Issue(s) to be Decided

Does the tenant have grounds to cancel a 2 Month Notice to End Tenancy? If not, should the landlord be issued an Order of Possession?

Background and Evidence

The landlords and the tenant testified that the tenancy for the rental unit began on February 1, 2008. Rent of \$1,480.00 is due on the first of every month and this is a month-to-month tenancy. The tenant described the unit as being a three bedroom, two bathroom apartment making up the main floor of a three storey house. The tenant said that the house also contained an attic and two basement suites. The landlords agreed with this description of the property. The tenant explained that from the outset of the tenancy, he has lived with another individual in the rental unit. Until recently, a third roommate rented the other available bedroom.

The tenant sought to cancel the landlords' two month notice, arguing that the house repairs which the landlords were planning to undertake were unnecessary. The landlord described the scope of the planned renovations and said that an October 2016 fire inside one of the bedrooms on the main floor required repairs to be performed and was their main motivation for issuing a 2 Month Notice. Specifically, the landlord described planned renovations and repairs to;

- The balcony
- The back staircase
- Replacement of the windows in the middle of the unit
- Replacement of a bedroom wall where water damage (as a result of the bedroom fire) was present
- Replacement of the apartment's flooring
- Replacement of the roof on the house

Both the landlords and the tenant testified that the fire in question took place in the bedroom of the tenant's roommate. They both confirmed that neither the landlords or tenant were present during the time of the fire, however, they both acknowledged that the fire department had responded. When asked to describe the extent of the damage that had occurred, the parties presented conflicting accounts on the scale of the fire's destruction. The landlords testified that the fire department had used foam to retard the fire that had ignited mattresses in the bedroom. They said this foam had gotten into the walls and was now leaking into the basement suite. The tenant disputed this testimony and explained that following the fire, he spoke to the fire fighters who attended the scene and they noted that the majority of the visible damage was cosmetic and not structural.

The tenant said that his roommate had no complaints about the current state of the room where the fire took place and alleged that the true motivation of the issuance of a 2 Month Notice was to force him and his roommate to vacate the property so the rent could be increased on the unit.

Analysis

Section 49(6) of the *Act* describes the circumstances that must be present when a landlord is to end a tenancy to renovate and repair a rental unit. It reads –

A 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 do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The burden of proof for me to issue an order of possession for a 2 Month Notice is placed on the landlords as the landlords must demonstrate why the tenant would be required to vacate the unit during the course of the renovations. Examining the nature of the repairs that were proposed, it is evident that this would not be the case. The tenant testified;

- The balcony which the landlord had identified as needing repair was not used in the winter and therefore any repairs that were needed would not affect his living space within the apartment;
- The apartment contained a front staircase and any work that was needed on the staircase in question would not disturb his entry or exit of the unit;
- The window which required replacement was not one that he had observed as having any leaks, furthermore a window replacement would not affect his ability to occupy the apartment;
- The fire damage was limited to the mattresses which were contained to one bedroom;
- Flooring repairs were unnecessary however, if they were to be performed they would not require him to vacate the apartment;
- The roof that needed replacing was located above the attic and would therefore not affect his daily use of the apartment. In addition, he stated that the roof had been repaired as recently as 2 years ago.

I find that both parties who spoke during the course of the hearing were credible. The tenant provided a compelling cross-examination of the landlord, in which he asked them to explain why exactly the repairs were deemed by the landlord to be “necessary.” Further to this point, the agents for the landlords acknowledged that they have not recently performed an inspection of the unit so they could not provide details of the necessity of the repairs. MG described a “brown line” on the outside of the window that she stated “looked like a leak” however, she said that she was “not sure” about this being a leak. The tenant testified that he has numerous electronic devices which are present in the unit and he would be very concerned should a leak appear. He said he would have taken note of a leak had it been present and that he has not notice the unit suffering from one.

Based on the testimony presented by the tenant, the tenant’s cross-examination of the landlord and the scope of the work to be performed, I allow the tenant’s application to cancel the 2 Month Notice.

I understand that the landlord is looking to perform repairs on the house, however, the extent of the repairs described does not require the tenant to vacate the premises. Furthermore, if major repairs were needed in the bedroom to fix any damage that may have resulted from the fire, a third, unoccupied bedroom is available for one of tenants of the main floor to move into.

Conclusion

The tenant’s application to cancel the landlords’ 2 Month Notice is allowed. The landlords’ 2 Month Notice, dated October 16, 2016, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 22, 2016

Residential Tenancy Branch

