



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with a tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's Two Month Notice To End Tenancy for Landlord's Use of Property (the "Two Month Notice"); and
- recovery of the filing fee for their application from the landlord.

The landlord and the tenants, J.B. and N.D., appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with the representation of counsel. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

During the course of the hearing, the tenants testified that they only learned about the nature of the landlord's renovations upon receipt of the landlord's evidence package. The tenants acknowledged having received the package on January 5, 2017. The tenants requested an adjournment to be able to gather further evidence to dispute the landlord's evidence that the construction workers require the unit to be vacant. The landlord objected to the adjournment request.

I did not grant the tenant's request for an adjournment taking into consideration the fact that the tenants were permitted to submit late evidence after receipt of the landlord's evidence package and the tenants had not made any efforts to gather the evidence they were requesting more time to collect.

Issue(s) to be Decided

- Is the tenant entitled to cancellation of the landlord's Two Month Notice?

Background and Evidence

The undisputed testimony established that a tenancy started on June 1, 2013 and that there is no written tenancy agreement. Rent is \$1,200.00 due on the first day of each month. The landlord received a security deposit in the amount of \$500.00 on June 1, 2013. The landlord and tenants disagreed as to whether the tenancy is a month to month or fixed term tenancy.

The landlord testified that it is a month to month tenancy. The tenants testified that it is a fixed term tenancy on the basis that they gave post-dated rent cheques for twelve months up until last June 2016. The tenants testified that there has never been an end date fixed to the tenancy.

The landlord issued a Two Month Notice dated November 30, 2016, with an effective move out date of March 1, 2017. The landlord served the tenant J.B. with a copy of the Two Month Notice in person by leaving a copy with her on November 30, 2016. The tenants confirmed these details.

The landlord's reasons set out in the Two Month Notice are as follows:

- 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.

The landlord testified that he resides in the lower suite and the tenants reside in the upper suite above him. The landlord testified that it is his intention to do renovations that help reduce the noise traffic above his unit. The landlord complained that the foot traffic is always present with every step and it is so disturbing that he leaves his suite to study or do required paperwork elsewhere. He also complained that he is a shift worker and the noise during the day is affecting his sleep. The landlord complained the noise that filters from upstairs is interfering with his quiet enjoyment of his suite.

The landlord testified that to enhance the sound proofing, he needs to replace the subfloor in the tenant's suite. The landlord testified that he applied for a permit and received it on January 5, 2017. The landlord submitted a copy of the permit.

The landlord submitted two quotes for the required work from contractors who the landlord intends to hire. The contractors require that the unit be vacant to complete the work.

The landlord testified that the work requires all flooring, doors, closet doors, baseboards, toilet and vanity, kitchen lower cabinets and all appliances to be removed for the upgrade. The landlord testified that services will be interrupted as a result of having to remove cabinetry. The landlord testified that the contractors require everything to be removed at once and that they are not able to do the work moving from room to room. The landlord testified that the work is estimated to take four to six months.

The tenants testified that they were told that this was supposed to be a long term tenancy agreement and that they had put their own money into the property.

The tenants questioned the genuineness of the landlord's reason for the upgrades. In support of their position, the tenants argued that soundproofing is not necessary as the tenants are quiet upstairs. The tenants further argued that the soundproofing won't resolve the noise pollution from the neighborhood. The tenants challenged the necessity and effectiveness of the proposed upgrades.

The tenants also argued that the landlord did not have all required government permits and approvals in place before issuing the Two Month Notice.

The tenants further argued that the nature of the work does not require the tenants to vacate the rental unit. The tenant's relied upon their own personal stories of past experiences with rental renovations. The tenants' submitted photographs of the interior and exterior of the unit.

The tenants are seeking to cancel the landlord's Two Month Notice.

Analysis

Based upon the above testimony and the documentary evidence, I find as follow.

The definition of “periodic tenancy” in the *Act* means :

- (a) a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this *Act*, and
- (b) in relation to a fixed term tenancy agreement that does not provide that the tenant will vacate the rental unit at the end of the fixed term.

Based upon the definition in the *Act*, I find that the tenancy is a month to month periodic tenancy. The tenants testified that there was no end date established as to when the tenants will vacate the rental unit at the end of the tenancy. Therefore, by definition the oral tenancy agreement established a month to month tenancy. I also note that it is difficult to establish a fixed term tenancy without a written tenancy agreement.

Section 49(6)(b) of the *Act*, allows a landlord to end a tenancy 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.

Policy Guideline #2 explains the ‘good faith’ requirement as requiring 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.

I find that there is sufficient evidence that the landlord has a genuine intention to complete the renovations to enhance the sound proofing to reduce the disturbing traffic noise from above. I did not find that there was sufficient evidence that the landlord has an ulterior motive.

I find that there is sufficient evidence that the landlord has all the necessary permits and approvals required by law to renovate the rental unit. In making this finding I accept that the permit submitted by the landlord is the only permit required to complete the work as the tenants have not raised any objections in this regard.

I find that there is sufficient evidence that the repairs and renovations require the rental unit to be vacant. In making this finding I have taken into consideration the evidence of the landlord’s contractors. I accept the landlord’s evidence that these contractors have stipulated that they require the unit to be vacant to complete the work.

I find that the fact that the landlord obtained the permit after service of the Two Month Notice does not invalidate the Notice nor cast doubt on the landlord’s good faith.

Based upon the foregoing, I find that the tenants are not entitled to cancellation of the Two Month Notice. Therefore, I dismiss the tenants' application and uphold the Two Month Notice.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s.55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

Based on the above testimony and evidence, I find that the Two Month Notice complies with section 52 of the *Act*. As a result, I find the landlord is entitled to an order of possession effective March 1, 2017 at 1:00 p.m., the effective date on the Two Month Notice.

As the tenants' application is dismissed, I find that the tenants are not entitled to recovery of the filing fee.

Conclusion

The tenants' application is dismissed and the Two Month Notice is upheld.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **March 1, 2017 at 1:00 p.m.**, subject to service of this Order on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 07, 2017

Residential Tenancy Branch