Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, FF

Introduction
This hearing dealt with the tenants' application for an order setting aside a 1 Month Notice to End Tenancy for Cause and a monetary order. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

The tenants advised that they had vacated the rental unit so the application to set aside the notice to end tenancy was no longer relevant. The hearing proceeded on the application for a monetary order only.

Issue(s) to be Decided
Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence
This tenancy commenced June 1, 2015 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. At the beginning of the tenancy the monthly rent, which is due on the first day of the month, was $1350.00. A year later the rent was increased to $1389.00. All of the arrangements were with the property manager.

The rental unit is one of four suites in this building. There are two units on each side of the building; one up and one down. The tenants rented an upper level unit.

As it turns out the building is zoned as a duplex, not a fourplex. The property manager testified that although this bylaw has been in place for years and years the city does not generally enforce it; it just charges an extra utility for the illegal suite. He also said that the same is true of many other duplexes in the municipality.

The tenants had filed an FOI request with the municipality and those records were submitted into evidence. The addressee on the letters is blocked out as is the name of the person to whom the various Bylaw Offence Notices were issued.

The municipal records show that in a letter dated May 10, 2015, the municipality ordered that the additional suites on both sides of the duplex must be decommissioned by August 31, 2015. There does not appear to have been any follow-up action by the municipality.

Starting May 2, 2016, the municipality started receiving complaints about noise due to parties, parking and an excessive number of people living in this building.

On May 10, 2016 the municipality sent letter ordering the landlord to decommission the illegal suites by August 31, 2016. On June 16 the unit below the tenants' was vacated. It was re-rented in July, which precipitated more complaints to the municipality. These complaints continued through the summer and fall.

The municipality sent another letter dated September 6 giving the landlord until September 31 to decommission the suites; then a Bylaw Offence Notice dated September 7; and then another Bylaw Offence Notice dated November 16.

The property manager testified that he was not the recipient of any of the correspondence, the owner was; and the owner did not share any of this information with him. The property manager testified that he did play telephone tag with someone at the municipality in the summer by they never connected. The municipal records show the same thing.

It appears from the municipal records that during this same period the owner was trying to negotiate a settlement with the municipality.

On November 28, 2016, the municipality sent another letter ordering the owner "to remove the additional suites within each side of the duplex and return the property to its approved use by December 31, 2016, to avoid any further enforcement, including the issuing of additional tickets and the municipality considering all other legal recourse."

At this point the owner decided to comply.

On December 12, 2016 the property manager issued and posted a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that: "Rental unit/site must be vacated to comply with a government order." The notice was accompanied by a letter from the property manager that stated, in part: "We regret to inform you that we have received notification from the [municipal] Use Compliance Division. As a result of numerous complaints, from Neighbours they will be enforcing the [zoning bylaw] which

allows for a total of only 2 suites on the property." The letter stated that all services would be disconnected by February 1, 2017.

The tenants of the downstairs unit on the other side of the duplex, who all witnesses seemed to agree were troublesome neighbours, were also served with a similar notice to end tenancy.

The property manager testified that the owner chose which two of the four tenants he wanted to keep as tenants at this property.

Both the property manager and the tenants gave some evidence about past communications regarding noise at this rental unit. There was no evidence of any written warnings being given to the tenants.

The tenants testified that the notice to end tenancy did not state an effective date so they moved out a month or so after it was served. The evidence from both parties was that the tenants moved out as of January 17, 2017; a final walk-through was conducted on that date; and the keys were returned to the landlord.

Analysis

Section 47(1)(h) of the *Residential Tenancy Act* provides that a landlord may end a tenancy if the rental unit must be vacated to comply with an order of the federal, British Columbia, regional or municipal government authority.

A tenant who has been served with a 1 Month Notice to End Tenancy for Cause may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Once a tenant disputes a notice to end tenancy the tenancy continues until a hearing has been completed and the arbitrator has decided whether the notice to end tenancy is valid or not. This means that until the arbitrator delivers his or her decision the tenant is entitled to use and occupancy of the rental unit and the landlord cannot force the tenant out unless and until the arbitrator has decided that the notice to end tenancy is valid. During the same period the landlord is entitled to the payment of rent in accordance with the tenancy agreement.

The tenants were not legally required to move out when they did. They could have stayed in the unit; made their arguments about the validity of the notice to end tenancy; and, if the arbitrator found in their favour, continued to live in the rental unit. Obviously, if events had unfolded in this manner the tenants would not have incurred any relocation costs.

If the tenants had not moved out before this hearing I could have considered whether the municipal order specifically required the landlord to decommission the lower units, or whether the notice to end tenancy met the requirements of section 52(c), i.e., that in order to be effective a notice to end tenancy must be in writing and must state the effective date of the notice.

However, once the tenants moved out and voluntarily ended the tenancy, I no longer have jurisdiction to decide those questions.

Further, by voluntarily ending the tenancy the tenants assumed any costs associated with their new place and moving. As a result, their claim is dismissed.

Conclusion

For the reasons set out above, the tenants' claim is dismissed.

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: February 08, 2017

Residential Tenancy Branch