



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANTA ANA HOLDINGS LTD., INC. #68884
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, PSF, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to the landlords to provide services or facilities required by law pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord has confirmed that the tenants served the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 21, 2017. The tenants have confirmed receipt of the landlord's submitted documentary evidence via Canada Post Registered Mail on February 28, 2017. No issues regarding service were raised by either party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Month Notice?

Are the tenants entitled to an order for the landlord to provide services or facilities agreed upon but not provided?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on February 9, 2017 the landlords served the tenants the 2 Month Notice dated February 9, 2017 via Canada Post Registered Mail. The 2 Month Notice sets out an effective end of tenancy date of April 30, 2017 and provides for one reason as:

The landlord has all 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 tenants seek an order cancelling the 2 Month Notice dated February 9, 2017 as the landlord has failed in a previous application for dispute for an order of possession for the same reason provided and challenges the landlords' good faith intent. The tenants also seek an order for the landlord to provide services or facilities as required in that the landlord has turned off the bathtub water on December 31, 2016 due to a leak and has not yet repaired it or turned the water back on as of the date of this hearing.

The landlord states that the rental unit needs to be vacant due to required repairs to the rental unit. The landlord has provided in support of the 2 Month Notice dated February 9, 2017 a copy of a plumbing permit issued February 9, 2017 for "renovation" (RE & RE PI Fixtures), the landlord clarified that this is to repair and replace fixtures and not renovate the unit. A copy of a letter dated February 20, 2017 from a plumbing and heating company which states in part,

I am the plumbing company W.P.&H., contractor to do repairs from start to finish...

Open all walls to do repairs to domestic water lines

Remove bath tub to do repairs to domestic water lines

Open flooring in washroom to do repairs as needed

Close floor back from water damage

To re-install new concrete board and around shower for tile to be replaced

Re-tile wall as before

I would require the bathroom to be out of service for at least 30 days or more depending if any other work needs to be possible performed (structural)

I would need 24 hours access to complete work without having to give notice each day

I would like to leave all tools there on the suite and that would take a lot of the living area to leave table in saw, tile saw, etc.

I need all tools to be secure and locked with no access from anyone else other than myself or manager

The tenants' agent (the tenants) stated that he was a retired 28 year experienced property manager who has extensive knowledge of property management and experience with water leaks. The tenants challenge the claims of the landlord stating he has seen the tenants' bathroom and photographs of the affected tenant below and has noted that he did not view any rotting wood, but just wet wood. The tenants have had the bathtub inspected by a plumber who has stated that there is no leak when the bathtub water is turned off since December 31, 2016 and that this is proof that there are no further issues with the plumbing which would require the unit to be vacant. The tenants claim that the problem is most likely the bathtub diverter which would require the bathtub fixtures to be replaced. The tenants stated that such a repair would only take a few hours or at most if more work is required approximately 1 week. The tenants stated that the landlords have not provided any evidence that there are more extensive repairs needed which would require a vacant unit.

The landlords stated that this is a 50 year old building and that a water leak caused the tenant below these tenants to have their ceiling opened. The landlords stated that the floor boards could be rotted and the plumbing compromised which would require extensive work. The landlords stated that other than the copy of the letter from their plumber she has no further evidence. The landlord also provided direct testimony that no inspections or reports have been made as to the extent of what if any work is required.

The tenants also seek an order for the landlord to turn back on the bathtub water by making the necessary repairs to the bathtub fixtures.

The landlords argued that the bathtub leak is not just for the bathtub, but is part of a more serious plumbing issue, but that no actual inspection has been made to determine what if any issues there are.

Analysis

Section 49 (6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, 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 this case, I accept the undisputed affirmed evidence of both parties and find that the tenants were properly served with the 2 Month Notice dated February 9, 2017 via Canada Post Registered Mail.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, the tenants challenge the landlords' good faith intentions of the 2 Month Notice.

2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

A claim of good faith requires 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...

If 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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, the landlords have stated that the rental unit is required to be vacant to make necessary repairs. The landlords rely upon a letter dated February 20, 2017 noted above which states that in part that all walls will be opened to repair domestic water lines, removal of the bathtub and repair wall behind the bathtub, open the flooring and do repairs as needed, close flooring due to water damage, reinstall new concrete board and re-tile. The landlords state that this work would require approximately 30 days and 24 hour access to complete the work. The tenants have provided conflicting and contradictory evidence that the scope of work is not so extensive. The tenants stated that since the bathtub water has been turned off since December 31, 2016, there have been no leaks. The tenants stated that if the water for the bath tub is turned on

then the fixtures for the bath tub leaks and at no other times. The tenants provided a dissenting opinion that if the leak were to be confined to the fixtures than a repair of the bath tub fixtures could take a few hours and if more extensive up to 1 week as opposed to the landlords' 30 day estimation. The landlords were unable to provide any detailed explanation of the leak repairs as no inspections have been done to determine what if any and the extent of any work.

I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlords. The landlords have failed to provide sufficient evidence to justify that the rental unit needs to be vacant in order for repairs to be made. The landlords' plumber has only provided general information regarding what work was to be performed and has failed to provide any conclusive evidence of the cause of the water leak or that it would require vacant possession to make the necessary repairs. I find that the lack of sufficient evidence from the landlord has raised questions regarding the landlords' good faith. The landlord relies mainly upon what could be present in the walls which would require repairs as opposed to an actual inspection by a certified plumber to report what repairs are needed to stop the leaking or where the leak originated. During the hearing both parties confirmed that the landlords had previously served the tenants with a 2 Month Notice which was set aside on February 3, 2017. The tenants provided testimony that this is a case of "renoviction" where if the tenants are evicted the rental unit would be offered at a much higher rent. I find that there is significant doubt raised as to the landlords' intentions which calls into question the landlords good faith. As such, the tenants' application to cancel the 2 Month Notice is granted. The 2 Month Notice dated February 9, 2017 is set aside and the tenancy shall continue.

The tenants' requested for the landlords to provide water to the bathtub due to a water leak which was turned off on December 31, 2016. Both parties confirmed that as of the date of this hearing no water has been restored to the bathtub. The tenants had claimed that the landlord was aware of this and has refused to act. The landlords claimed that the water cannot be turned on due to the water leak, but that no inspection has been done by a plumber. I find that this is inexcusable, as the tenant has not had access to the bathtub for 74 days as of the date of this hearing and the landlord has not rectified the issue.

Section 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. In this case, the landlord has failed to provide sufficient evidence to satisfy me that the turned off water to the bathtub is as a result of a larger plumbing issues as opposed to a leak from the bathtub fixtures. The

landlords have admitted that no inspections as to the cause of the leak have been made by a plumber. I order that the landlords contract a certified plumber to inspect and repair the leaking bathtub fixtures to allow the water to be turned on for the bathtub. As the tenants have gone without a bathtub for the approximate 74 days, I order that the landlord comply with this order within 7 days of receiving this decision.

The tenants having been successful in their application are entitled to recovery of the \$100.00 filing fee. I order that the tenants may withhold \$100.00, one-time from the monthly rent upon receipt of this decision.

Conclusion

The 2 Month Notice dated February 9, 2017 is set aside and the tenancy shall continue. The landlord is ordered to have the bathtub inspected by a certified plumber and repaired within 7 days of receiving this decision.

The tenants may withhold \$100.00, one-time from the monthly rent in recovery of the filing fee.

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: March 23, 2017

Residential Tenancy Branch