



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 750 PEMBERTON DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, O, FF, CNL, MNDC, MNSD, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession pursuant to section 55;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants' applied 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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. No issues of service were raised by either party. As both parties have attended and 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.

At the outset of the hearing the tenants requested an adjournment due to the late submission of documentary evidence. The tenants stated that a written statement was submitted on April 9, 2017 via fax just prior to the scheduled hearing date. The landlord objected to the adjournment and stated that the witness statement was unrelated to the primary issue of both the landlord and tenants' application regarding the 2 Month Notice dated March 7, 2016. The tenants confirmed that the written statement was not related to the 2 Month Notice, but argued that the details were relevant to the hearing. The tenants reiterated that the statement was regarding the landlord's promise to enter into a new fixed term tenancy. The tenant stated that the agreement was made verbally. The landlord disputed that no such promise was made. I find that the tenants have failed to provide sufficient detail of how the written statement would be relevant to the 2 Month Notice which would require an adjournment. As such, the tenants adjournment request is denied.

During the hearing the tenants clarified that the monetary claim for money owed or compensation, a request for the return of the security deposit, a request for an order for the landlord to comply with the Act, regulation or tenancy agreement were made in error. As such, no further action is required for these portions of the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2015 on a fixed term tenancy ending on September 31, 2016 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid.

Both parties confirmed in their evidence that the landlord served the tenants with a 2 Month Notice dated March 7, 2017 which sets out that the tenancy shall end on June 1, 2017 for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Both parties confirmed that the reason given was for the landlord's mother-in law to move into the suite on June 1, 2017.

The tenants stated that they are not disputing the reason of the 2 Month Notice, but instead seek an order to cancel this notice as the landlord made a verbal promise extend their tenancy and enter into a new fixed term tenancy.

The landlord disputed this claim stating that no promises were made to extend the tenancy with the tenants. The landlord reiterated that the intent of the 2 Month Notice is to have the mother-in –law of one of the landlords occupy the rental unit.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, both parties confirmed that the landlord served the tenants with the 2 Month Notice dated March 7, 2017 in person. Both parties confirmed that the tenants are not challenging the reason set out on the 2 Month Notice. The tenants instead argued that it was “not fair” that the landlord was trying to end the tenancy as the landlord had made a verbal promise to extend their tenancy. This claim was disputed by the landlord.

I find the tenants were properly served with the 2 Month Notice dated March 7, 2017 and based upon the undisputed evidence of both parties that the reason for the 2 Month Notice was for the landlord's mother-in-law to occupy the rental unit. As such, the tenants have failed to establish a claim to cancel the 2 Month Notice dated March 7, 2017. The tenants' application to cancel the 2 Month Notice is dismissed. The landlord is granted an order of possession for the stipulated date on the 2 Month notice on June 1, 2017.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession for June 1, 2017.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court 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: April 13, 2017

Residential Tenancy Branch