



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

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; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by his agent (the "Landlord") who confirmed he was authorized to represent the respondent.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 2 Month Notice or the tenants' application for dispute resolution. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 2 Month Notice, the tenants' application and their respective evidence.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This tenancy began in 2012 and the current monthly rent is \$1,350.00 payable on the first of each month. A security deposit of \$625.00 was provided by the tenants at the start of the tenancy and is still held by the landlord.

The landlord testified that the landlord's son, who currently works out of the province, is being transferred to BC by his employer and therefore will be occupying the rental unit. The tenants said that they have no reason to doubt the landlord's intentions but wish that they could remain in the rental unit.

The tenants testified that several of the appliances in the rental unit have broken down and therefore there is a loss in the value of the tenancy. Among the deficiencies the tenants listed include; a leaky kitchen faucet, a non-functioning microwave, and a dishwasher that leaks. The tenants also said that the refrigerator broke down two years ago and the tenant, BB arranged for a temporary replacement to be installed. The tenants testified that the original refrigerator has not been removed from the rental unit and that the landlord has not arranged for a permanent replacement unit to be installed. The tenant VH testified that she notified the landlord of the various deficiencies verbally and then in writing by providing a list of the problems in the rental unit to the landlord.

The landlord testified that the tenants have not alerted them to issues in the rental unit. The landlord said that he believed the refrigerator had been sufficiently replaced and was unaware that the tenants were awaiting a different refrigerator unit to be installed. The landlord said that the tenants have not informed him of the other deficiencies listed in their notice of dispute resolution.

Analysis - Tenancy

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlord intends in good faith to have his son occupy the rental unit.

The landlord provided consistent, cogent evidence regarding the intention to have the landlord's son occupy the rental unit. I find the explanation of who will occupy the rental unit, where they currently reside and the reason they will be moving into the rental unit to be logical and reasonable. I find that on a balance of probabilities I am satisfied the landlord will use the rental unit for the purpose expressed.

Therefore, I find on a balance of probabilities that the landlord intends that their son occupy the rental unit. I dismiss the tenants' application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

As I have dismissed the tenants' application and as I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55 with an effective date of April 30, 2017.

Analysis – Monetary Award

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants make an application for \$3,000.00 of loss and damages as a result of the landlord's failure to repair or replace certain kitchen appliances. They claim the following amounts in her Monetary Order Worksheet:

Item	Amount
Broken Refrigerator (2 years)	\$2,400.00
Broken Microwave (2 months)	\$200.00
Broken Dishwasher (2 months)	\$200.00
Leaky Faucet (2 months)	\$200.00
Total:	\$3,000.00

I find that there is very little evidentiary basis to support the tenants' claim, much less in the amount that the tenants feel is appropriate. I find that there is little evidence that the appliances are malfunctioning, that the tenants reported this to the landlord or that they have been inconvenienced because of the loss. The tenants' evidence consists of subjective complaints. The tenant provided no written evidence to show they have reported the issue to the landlord prior to making their application for dispute resolution. The landlord testified that he was unaware there were any issues with the rental unit.

If the tenants were waiting for the landlord to provide a permanent replacement refrigerator I find it would be reasonable to expect there to be some communication during the 2 years of waiting. The tenants have provided no written evidence supporting their position. I find it difficult to believe that the tenants would not have had any discussion or written correspondence with the landlord in 2 years if they were dissatisfied with the condition of the refrigerator.

I find that there is insufficient evidence to conclude that the tenants' dissatisfaction with the rental unit arises from negligence on the part of the landlord. Therefore, I am dismissing the tenants' claim for a monetary award.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **April 30, 2017**, the effective date of the 2 Month Notice. 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 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 10, 2017

Residential Tenancy Branch