



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL; FF

Introduction

This is the Tenants' Application for Dispute Resolution made March 27, 2017, seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use issued March 26, 2017 (the "Notice"); and to recover the cost of the filing fee from the Landlord.

This matter was originally scheduled to be heard by teleconference on May 1, 2017, at 9:30 a.m. There were technical difficulties with the teleconference, and the matter was rescheduled to May 2, 2017, at 9:00 a.m., by teleconference. The Residential Tenancy Branch advised both parties of the rescheduled Hearing date and time, along with the sign-in information.

Both parties signed into the rescheduled teleconference and gave affirmed testimony.

It was determined that each party served the other with copies of their documentary evidence, by registered mail.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Background and Evidence

This tenancy began on March 1, 2015. The tenancy agreement was initially a 6 month lease, and converted to a month-to-month tenancy thereafter. Monthly rent is \$1,100.00, due on the first day of each month. Rent includes utilities. The Tenants paid a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$550.00.

The rental unit was sold on February 28, 2017, and the new owner (the Landlord) inherited the tenancy agreement. The rental unit is the basement suite of a house. The upper suite is also tenanted.

A copy of the Notice was provided in evidence. The Landlord hand delivered the Notice to the Tenants at the rental unit on March 26, 2017. The Tenants are disputing the Notice and question the Landlord's "good faith" intentions.

The Landlord testified that he wishes to replace the oil furnace and make changes to the electrical distribution at the rental property. He stated that his insurance company requires him to remove a "single wall oil tank" at the rental property. The Landlord provided a copy of an e-mail from his insurance provider in evidence.

The Landlord testified that he intends to replace the oil furnace and the electric baseboards with a "two stage furnace", which will necessitate "isolating the circuits". The Landlord testified that no electrical or gas permits are required prior to the work being done, and stated that he is an electrician. He testified that he will either do the work himself, which may take a month, or he will contract it out, which may take a week.

The Tenants submitted that they believe the Landlord issued the Notice in retaliation because they would not sign a new tenancy agreement on March 9, 2017. A copy of the draft new tenancy agreement was provided in evidence. The Tenants stated that the new tenancy agreement would require the Tenants to pay for half of the utilities and to move out of the rental unit after a 6 month term. They stated that they were attempting to negotiate a different tenancy agreement with a higher rent and on a month-to-month basis, but talks broke down and they were served with the Notice. The Tenants provided copies of texts in evidence.

The Tenants testified that the electric panel is situated in a "closet wall" on the outside wall of the house and that the Landlord wants to move the panel into the garage.

The Tenants questioned why their suite was required to be empty but the Landlord was not requiring the upstairs tenant to move out.

The Tenants stated that there were they would be willing to cooperate with the Landlord with respect to access to the rental unit while the electric work was being done, and possibly move out of the rental unit temporarily to accommodate the Landlord's work schedule.

The Tenants testified they have already lived through a renovation and that there was electric work done to the rental property 13 months ago as a result of a flood. They stated that the previous owner had a restoration company do the work under an insurance claim. The Tenants provided copies of photocopies of photographs taken during the restoration.

The Landlord denied any ulterior motive for ending the tenancy. He stated that he drafted the new tenancy agreement as a 6 month term lease because he wanted to give the Tenants the maximum amount of time to find alternate accommodation in a tough market. He stated that the weather will soon be warmer and the furnace will not be needed for another 6 months.

The Landlord testified that there will be no hot water in the rental property while the renovations are taking place, and that there will be limited use of appliances, such as fridges. He stated that the upstairs tenant may move out, but that he has not given him notice to end the tenancy yet.

The Landlord expressed concern that there is an “increased level of animosity” with the Tenants and stated that he is worried that they will not cooperate with him regarding access to the rental unit during the renovations.

Analysis

The Notice gives the following reason for ending the tenancy:

“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.”

There is a two part test for this reason to end a tenancy:

1. Does the Landlord have all necessary permits and approvals required by law? The Landlord testified that he did not require any permits or approvals to renovate the rental unit.
2. Are the renovations of such a nature that the rental unit must be vacant? The Landlord did not provide documentary evidence to support any plan for renovations at the rental unit, for example a list of renovations to be completed and a time line for their completion. I found the Landlord to be vague with respect to what plans, if any, he had for renovation. In any event, the Tenants stated that they were prepared to accommodate the Landlord by providing generous access and/or temporarily moving out while renovations were taking place. In addition, the Landlord has not provided the upstairs tenant with a notice

to end the tenancy and provided insufficient evidence that the downstairs suite required more extensive renovations than the upstairs suite, or even what the renovations were.

The Tenants called into question the landlord's motive for issuing the Notice. When a tenant questions the "good faith" intent of a landlord, the onus is on the landlord to provide sufficient evidence, on the balance of probability, that there is no ulterior motive for ending the tenancy.

1. The Notice was issued on March 26, 2017. The documentary evidence confirms that the parties were negotiating a new tenancy agreement up until April 1, 2017. I find it unlikely that the Landlord would negotiate a new tenancy agreement while seeking to end the tenancy.
2. I accept the Tenants' evidence that the rental property was "stripped down to the studs and fully rebuilt" between March and June, 2016, during which time the tenancy continued.

The Tenants' copies of text messages include the following statement by the Landlord:

"..... the month to month lease as a landlord is a very poor contract. I can't help by feel that this is less about trust and more about negotiating a below market rental situation...."

I find that, on a balance of probabilities, the Landlord was not acting in good faith when he issued and served the Tenants with the Notice. Rather, I find that it is likely that the Notice was served because the Landlord was not successful in renegotiating a new tenancy agreement with the Tenants that would:

1. Cause the Tenants to pay ½ of the utilities, when utilities are included in rent under the existing tenancy agreement; and
2. Change the tenancy agreement from a month-to-month tenancy to a fixed term 6 month tenancy, requiring the Tenants to vacate at the end of the term and enabling the Landlord to re-rent the rental unit for a higher rent.

Therefore, for the reasons outlined above, I find that the Landlord is attempting to end the tenancy in bad faith and **the Notice is cancelled.**

The Tenants have been successful in their Application to cancel the Notice and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use issued March 26, 2017, is cancelled. **The tenancy will continue until it is ended in accordance with the provisions of the Act.**

Further to the provisions of Section 72 of the Act, **the Tenants may deduct \$100.00, representing recovery of the filing fee, from future rent due to the Landlord.**

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: May 02, 2017

Residential Tenancy Branch