Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FF

Introduction

A hearing was convened based on cross-applications under the *Residential Tenancy Act* (the "Act") based on a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 27, 2017 (the "2 Month Notice"). The landlords applied for an order of possession and recovery of the application filing fee.

The tenant applied for an order cancelling the 2 Month Notice. The tenant also filed an amendment to his application on June 23, 2017, seeking monetary compensation. The landlords confirmed that they had received the amendment the following day. At the outset of the hearing I advised the tenant that the amendment had been filed too late for the landlords to have an opportunity to respond in advance of the hearing and that I would therefore be dismissing that portion of his application with leave to reapply.

Both of the landlords and the tenant attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the submissions of the other party.

Service of the respective parties' applications, notices of hearing, and evidence was not at issue.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Are the landlords entitled to an order of possession based on the 2 Month Notice?

Are the landlords entitled to recovery of the application filing fee?

Background and Evidence

This tenancy began in June of 2008. A copy of the tenancy agreement was in evidence. It is a month to month tenancy, with a current rent of $753.20 due on the first of the month. A security deposit of $400.00 was paid at the beginning of the tenancy and remains in the landlords' possession.

Both parties provided written submissions and gave oral evidence at the hearing. In brief, the landlords stated that they need and want the downstairs suite for themselves. They have considered selling their home, and purchasing another, but that plan is on hold in light of market conditions. Meanwhile, they intend to take over the unit below them for their own use.

The landlords stated that they intend to paint and repair as needed, and then use the kitchen/living room/dining area (one large room) as a family room and gym. They said that they have a Bow-Flex, a Nordic Trac Skier, and a Wii fitness system and second television for this area. They intend to use the south-facing bedroom as a studio/sewing room, and the second bedroom for storage and as a guest room. They would also like to relocate their camper and tools, which are currently stored at a family member's vacation property. That property is about to be sold (has a pending offer on it).

The landlords further said that they have sacrificed their space and privacy in order generate rental income for many years but are now able to manage without that income and would like to have the benefit of the additional space.

The tenant alleged in response that the landlords are attempting to evict him now because he took them to Small Claims Court over the theft of bleach from the shared laundry room and the theft of money given to the landlords for fruit trees. He stated that as a result of his lawsuit against them, the landlords applied to evict him, and another arbitrator refused to end the tenancy in that case. He further stated that the arbitrator told the landlords that they could not evict him simply because they did not like the fact that he had sued them. The tenant did not submit the written decision in that prior dispute in evidence. He testified that it was heard sometime in March of 2016.

The tenant also stated that the landlords have since tried to force him to leave by cutting off his laundry and by stomping on the floor and cutting off his heat and hot water. The tenant did not submit any evidence in support of this claim, with the exception of the landlords' notice of the withdrawal of laundry.

The landlords in response testified that they turned the hot water and heat down after the tenant was purposefully running hot water down the sink for hours to spite them. They admit that they stopped providing laundry but say they did so with the appropriate notice and a corresponding rent reduction. The materials in evidence confirm this.

The tenant accused the landlords of being liars, and detailed some alleged untruths in their written submissions. As an example, the tenant said that the landlords' statement that he moved in after a three month "trial term" was not accurate, because in fact he wanted a month-to-month tenancy to begin with, and the landlords wanted him to sign a second three month fixed term after the first. The tenancy agreement in evidence shows that the tenant did sign a month-to-month agreement after the initial fixed term agreement. The tenant also said that it was not true that the landlords moved some of their belongings away in response to the tenant's concerns about smells. However the tenant also said that he did not like a chemical smell caused by some of the belongings.

The tenant testified that the acrimony around the tenancy really began when one of the landlords entered his suite to turn off a fan. He also stated that he's been upset for years of the tenancy and has had to move into other rooms in order to sleep.

The tenant also stated that he did not believe the landlords need additional space because they appear to have been selling off their belongings. He said that he cannot prove what they will and will not do with the rental unit but does not think that they exercise much. He also stated that he does not believe they can afford not to have a tenant, because one of the landlord's work hours have been reduced.

The tenant advised that he has already been preparing to move.

Analysis

Section 49(3) allows a landlord to end a tenancy if the landlord intends in good faith to occupy the unit. Based on the landlords' testimony and written submissions, I accept that the landlords intend to incorporate the downstairs suite into their own living space. The landlords have testified that they are no longer required to compromise their privacy in exchange for rental income. They have also set out their intentions with respect to the use of the space.

The tenant has questioned the landlords' motives. He has suggested that the landlords have been attempting to end the tenancy for some time, first by applying to end it because he sued them, and then by making the laundry unavailable to him, stomping overhead, and cutting off the heat and hot water. The tenant appears to be alleging that

the reason for ending the tenancy cited on the 2 Month Notice is not legitimate or that the landlords have an ulterior motive.

Residential Tenancy Branch Policy Guideline #2 states that when the evidence raises a question about whether the landlord has another motive or purpose for ending a tenancy, the landlords must establish that they truly intend to do what they claim and that they do not have an ulterior motivation for ending the tenancy.

It is clear that relationship between the tenant and the landlords has deteriorated over the last while. However, I do not believe that they have any motive other than reincorporating the rental suite into their unit. I do not accept that the landlords turned down the heat and hot water in an attempt to end the tenancy. Rather, I find that they did so in response to the tenant's running the water out purposefully after their withdrawal of laundry. Nor do I accept that the landlords have attempted to drive the tenant out by deliberately making noise. And, although the landlords appear to have applied to end the tenancy over a year ago after the tenant sued them, I accept that they recognized they were not authorized to do so, and the tenancy continued for some time before the landlords decided to expand their living space rather than moving. Based on these considerations, I do not believe that the evidence calls the landlord's good faith intentions into question and, in any event, the landlords have established to my satisfaction that they truly intend to do what they say.

The landlords have been forthright in saying that the relationship with the tenant has become stressful and they are would rather not have to continue to deal with it now that they are in a financial position to take over the rental unit. The fact that their relationship with the tenant is strained does not mean that they do not have a good faith intention to occupy the space.

Accordingly, I uphold the 2 Month Notice, and the tenant's application to cancel the 2 Month Notice is refused.

This tenancy will end on July 1, 2017, the effective date of the notice. The tenant and anyone on the premises must vacate the premises by that date. The landlords are entitled to an order of possession pursuant to s. 55. The 2 Month Notice complies with s. 52 of the Act.

Conclusion

The landlords' application is allowed.

The tenant's application to cancel the 2 Month Notice is refused. The tenant's application for monetary compensation is dismissed with leave to reapply.

I grant an order of possession to the landlords effective at **1:00 pm on July 1, 2017.** Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

As the landlords are successful in their application they are entitled to recover the application filing fee, and are authorized to retain $100.00 of the security deposit in satisfaction of that amount.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: June 28, 2017

Residential Tenancy Branch