



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL CNL FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for landlord’s own use pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

Tenant DK (the tenant) testified that he was representing both tenants at the hearing. As he confirmed receipt of the 2 Month Notice on June 2, 2017, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues(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 either of the parties entitled to recover the filing fee for their applications?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2012 with monthly rent currently set at \$1,864.56, payable on the first day of each month. The landlord still holds a security deposit of \$825.00 and a pet damage deposit of \$200.00. The tenants continue to reside in the rental unit.

The landlords issued the 2 Month Notice on June 2, 2017, for the following reason:

- The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord provided the following background for why he had decided to issue the 2 Month Notice. He testified that the 2 Month Notice was issued as he intends to renovate the suite to add a third bedroom, as well as perform some other renovations to update the suite. The landlord testified that the renovations would be more than cosmetic in nature, and would require the unit to be vacant for at least six months in order to open up the walls, re-tile the suite, scrape the ceilings, change the carpet and appliances, and add a third bedroom. The landlord testified that the renovations are extensive enough that it would not be safe for the tenants to remain in the suite. The landlord testified that the unit was purchased in order to renovate and re-rent at market rate as a three bedroom suite, instead of a two bedroom suite. The landlord testified that the current rent does not cover his mortgage.

The landlord testified that he had obtained all the necessary permits and permission from the strata to proceed. The landlord included a copy of the building permit obtained in order to "remove non-structural wall between kitchen and living room and create a wall in the dining room, renovate kitchen, add and change doors". The landlord included the attached drawings which state the scope of work to be completed. The landlord also included a letter that was sent to the tenants in regards to the timing of the renovations,

which the landlord estimated to take six months. The landlord included a few articles from online websites to support his estimate.

The tenants dispute the 2 Month Notice, stating that the landlord's plans were cosmetic in nature, and did not require the unit to be vacant, or for them to permanently move out. The tenants also dispute the landlord's testimony that the renovations would take more than 2 months.

Analysis

Subsection 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;

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy."

Although the landlord stated that they had issued the 2 Month Notice in order to renovate the home, I find that the tenants had raised doubt as to the true intent of the landlord in issuing this notice. As the tenants raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord did not dispute the fact that the purpose of the renovations was to re-rent the suite at a higher rate. In the hearing, the landlord also did not provide sufficient evidence as to why the unit could not be renovated while the tenants were still living

there, or why the tenants could not be provided alternative housing. The landlord admitted that the ultimate plan was to obtain higher rent.

I find that the landlord has not met their burden of proof to show that he issued the 2 Month Notice in good faith, in order to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The landlord stated that his goal was to obtain a higher rate of monthly rent by adding a third bedroom, which requires ending the tenancy with the current tenants. Section 49(6) does not provide for evicting tenants in order to obtain higher monthly rent as a reason to end the tenancy by way of a 2 Month Notice.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that the landlord did not provide sufficient evidence to support why they required the tenants to permanently vacate the rental home in order to perform the planned renovations. The landlord also raised concerns about his mortgage payments exceeding the monthly rent payments, which brings into the question the landlord's true intentions to end this tenancy.

Although the landlord was able to obtain a permit for the renovations, the landlord did not provide sufficient evidence for this hearing to support that the renovations required the tenants to permanently vacate the rental unit. The landlord did not provide any contractor's reports, witness testimony, statements, or estimates specific to this rental unit to support the estimated timeline provided by the landlord or the landlord's testimony that the renovations would require the tenants to vacate the home. In the absence of these things, and in light of the fact that the tenants raised doubt as to the landlord's intentions in ending this tenancy, I find that the landlord did not meet their burden of proof to show that they do not have another purpose that negates the honesty or intent as there may very well exist an ulterior motive for ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, require the tenants to vacate this specific rental unit in order to undertake the proposed renovations.

Based on these circumstances, I am allowing the tenants' application to cancel the 2 Month Notice dated June 2, 2017, and this tenancy is to continue as per the *Act*. The landlord's application is dismissed in its entirety.

As the tenants were successful in their application, I am allowing them to recover the \$100.00 filing fee for this application.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated June 2, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 16, 2017

Residential Tenancy Branch

