



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAHN INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) issued on June 15, 2017, to cancel a One Month Notice to End Tenancy for Caused (The “One Month Notice”), issued on June 26, 2017, and to recover the filing fee from the landlords.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving the reasons given in the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

At the commencement of the hearing the landlord questioned whether evidence considered at a previous hearing heard on June 12, 2017, is allowed to be considered at this hearing.

As the tenants have raised the issue of “good faith” in their application on the Two Month Notice that is the subject of today’s hearing, I find any previous evidence that is relevant to the issue of “good faith” will be considered.

This matter commenced on September 14, 2017, there was insufficient time to conclude all issues in the tenants’ application. The matter was adjourned and an interim decision was made which should be read in conjunction with this decision.

On October 31, 2017, the parties agreed to mutually cancel the One Month Notice. Therefore, I find it appropriate to cancel the One Month Notice, issued on June 26, 2017.

Since I no longer need to consider the balance of the tenants’ application, I have cancelled the reconvene hearing scheduled for December 7, 2017 at 9:30 a.m.

Issue to be Decided

Should the Two Month Notice be cancelled?

Background and Evidence

The tenancy began on January 1, 2012. Current Rent in the amount of \$1,410.00 was payable on the first of each month. The tenants paid a security deposit of \$647.50.

The landlord’s subject to this hearing purchased the property in April 2017.

On April 20, 2017 the landlord issued a Two Month Notice to End Tenancy for Landlord’s Use of Property. The reason stated in the notice to end tenancy was that:

- The landlord has all the 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.

The tenants disputed the above notice which was heard by a different Arbitrator on June 12, 2017. The Arbitrator issued a decision on June 14, 2017, which granted the tenants’ application to cancel the notice to end tenancy. The Arbitrator found that the proposed renovation did not require the rental unit to be vacant.

Two Month Notice

The parties agreed that the Two Month Notice subject to this hearing was issued on June 15, 2017, and received by the tenants on June 19, 2017, indicating that the tenants are required to vacate the rental unit on August 31, 2017.

The reason stated in the Two Month Notice was that:

- The rental unit is a family corporation and a person owning voting shares in the corporation, or a close family member of that person intends in good faith to occupy the rental unit.

The landlord DS testified that they own 50% of the property. DS stated that when they purchased the property in April 2017, that she intended to make this property her principal residence after extensive renovations were completed.

DS testified that she and her husband LK are separating on a trial basis. DS stated that no legal separation has been signed at this time. DS stated that they did not think it was necessary to disclose their personal matters to the tenants or at the first hearing.

The tenant TR testified that they do not believe the landlords have issued the Two Month Notice in "good faith". The tenant stated that the first hearing there was nothing said about the landlord DS moving into the premises.

The tenant TR testified that right after the decision issued on June 14, 2017, which was received on June 15, 2017, by email that the landlords issued in the new Two Month Notice claiming a different reason.

The tenant TR testified that it makes no sense that the landlord DS would be moving into the premises after the renovations were complete. Since it was the landlord who offered that they could move back into the premises after the renovation was completed for rent in the amount of \$2,400.00 per month. Filed in evidence is an email dated April 14, 2017.

The email reads in part,

"Hi ...

Consider this ... I own these – Would you be interested in moving back in to your unit when redone for \$2400 – redoing kitchen with quartz countertops, redoing bathroom fixtures, redoing flooring – hardwood, replacing some windows, new appliances Murphy bed in smaller bedroom, repainting. Similarly for Unit B, for \$2200 – repairing and repainting exterior, adding a large storage shed. Parking spot would be extra. If this interests you I can give a break on the Vancouver suites if you moved back to ..."

[Reproduced as written]

The tenant TR testified that the landlords are simply attempting to evict them so they can rent the premises for \$2,400.00, which is \$1,090.00 per month more than they are currently paying.

The tenant TR testified that the lower unit was issued a Two Month Notice to End tenancy for the same reason as in the earlier notice; however, the tenants accepted the notice and vacated. The tenant stated that the landlord had re- rented the lower premises on June 3, 2017, prior to the lower occupants vacating or any work completed and the unit was rented at a significant rent increase. The tenant stated that the amount of the new tenancy agreement is the same amount the landlord was expecting them to pay if they wanted to stay.

The landlord LK testified that the tenants are trying to make them look bad. LK stated that they could only check one box off on the Two Month Notice and they felt the best reason to select was for renovations on the first notice.

The landlord LK testified that the tenants are turning around initial discussion to try and discredit them twisting their words.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith", the onus lies on the landlords to prove the reason stated.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

In this case, the evidence of the landlords was that the main reason the property was purchased was so that DS could move in the premises after it was renovated. I find if that were true it would have be reasonable for the landlords to request vacant possession of the property when they purchased the property.

The first notice to end tenancy issued on April 20, 2015, was for renovations. At no time before or during the hearing was it disclosed that the renovation was for the sole purpose of DS moving into the premises, I find that would have been reasonable if that were the true intent of the landlords.

Further, I find if there was no motivation to increase the rent, the landlords could have asked the tenants if they would like to live in the lower unit at the same rent that they were paying. Rather, than to find a new tenant that was willing to pay a significant amount of more rent.

Furthermore, I find the email dated April 14, 2017, very compelling. This is not just an initial discussion or twisting of words; rather it was an offer to the tenants to re-rent the premises after the renovations were completed. I find such an offer to re- rent would have been unreasonable

if the true intent was for DS to move in to the premises after it was renovated as they had claimed.

I also find the actions the landlord with the lower unit, consistent with a “renoviction”, for the sole purpose of increasing the rent as the lower unit was re-rented on June 3, 2017. At that time the renovations were not made and the lower occupants were still living in the premises at the time.

I find that on the balance of probability that the motive for seeking to have the tenants vacate the rental unit is likely to significant increase the rent and therefore not issued in good faith. Therefore, I find the landlords have not met the burden of proof.

In light of the above, the tenants’ application to cancel the Two Month Notice is granted and the notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenants’ were successful with their application they are entitled to recover the filing fee from the landlord. The tenants are authorized a onetime rent reduction in the amount of \$100.00 from a future rent payable to recover this monetary claim.

Conclusion

The tenant’s application to cancel the Two Month Notice to End Tenancy Issued on June 15, 2017, is granted. The tenancy will continue until legally ended in accordance with the Act.

The One Month Notice to End Tenancy for Caused, issued on June 26, 2017, is cancelled by mutual agreement.

The tenants’ are authorized a onetime rent reduction to recover the cost of the filing fee from the landlords

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: November 1, 2017

Residential Tenancy Branch