



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on January 18, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

Both parties were present at the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on October 31, 2017. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

In the hearing, the Landlord stated that he has a few different rental properties, and that this one is his nicest. He stated that he is now at an age where he wants to scale back on being a Landlord, and sell some of his properties. The Landlord stated that the house he currently lives at is in a state of disrepair,

and he wants to move into the subject rental unit. The Landlord acknowledged that his relationship with the Tenants has degraded, but alleged that the Tenants' allegations of bad faith are unfounded.

The Landlord stated that he has every intention of moving into the rental unit because it is much nicer than the place he is currently living.

The Tenants stated that the Landlord had been harassing them, and has been unfairly trying to evict them. The Tenants stated that they got a 1-Month Notice to end tenancy earlier in 2017, which they disputed and won, so the Landlord is issuing this 2-Month Notice in bad faith to get them out. The Tenants stated they felt intimidated with the way in which the Landlord served his evidence in person, and the fact that he comes to the rental house and knocks on the door. The Tenants expressed that the Landlord should have corresponded by mail or by leaving documents at the door, rather than being confrontational.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to occupy the unit (as he has indicated on his 2-Month Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been a degradation in the relationship between the Landlord and the Tenants. I also acknowledge that prior to this 2-Month Notice, there was a 1-Month Notice that was issued, and cancelled at a previous hearing in the fall of 2017. The Tenants' are alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured, rather than because he actually needs to live there. However, in response to the Tenants' allegations of bad faith, and to explain why he issued the 2-Month Notice, the Landlord expressed that he is now at an age where he wants to scale back how many properties he owns and rents. As such, he has decided to move out of his current house, which is in poor condition, into the Tenants' house, because it is much nicer. The Landlord stated that this is all part of his plan to slowly sell off some of his houses, and stop being a Landlord.

Ultimately, after looking at the totality of the situation before me, I find the Landlord's explanation regarding his intentions and his use of the subject property is reasonable and I find the Tenants' allegations of bad faith are not sufficiently demonstrated, such that I would find that Landlord did not intend to occupy the rental property as he has indicated on his 2-Month Notice.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenants would be entitled to compensation as follows:

Section 51 of the Act reads,

...

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as

applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find the Landlord has sufficiently supported his reasons to issue the 2-month Notice. The Tenants' application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy dated October 31, 2017, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective January 31, 2018, after service on the Tenants. If the Tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 18, 2018

Residential Tenancy Branch