



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On February 2, 2018, the Tenants submitted an Application for Dispute Resolution asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property.

The matter was set for a conference call hearing. The Landlord and Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they have received each other's documentary evidence. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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 to be Decided

- Should the 2 Month Notice to End Tenancy be cancelled?

Background and Evidence

The Tenant testified that the tenancy began in May 2014, and is a month to month tenancy. Rent in the amount of \$700.00 is to be paid by the 7th day of each month. The Tenants did not pay a security deposit or pet damage deposit, as none was required. The Tenants rent includes the cost of electricity.

The Landlord testified that the Landlord purchased the property on September 30, 2017. The rental unit is a manufactured home that sits on a property that is shared with a gas station. The Landlord inherited the existing tenancy and the terms and conditions of the existing tenancy agreement.

The Landlord testified that they believed the rental unit was in good condition when they purchased it. The Landlord testified that the rental unit is actually in poor condition and needs major repairs. The Landlord provided the following testimony regarding the condition of the unit:

- the flooring in the unit is soft and needs replacing.
- the bathroom has mould and need renovation.
- the windows are in poor shape and need replacing.
- there was mould found in a closet.
- the roof may need replacing.
- the plumbing lines outside the unit require inspection.

The Landlord provided photographs taken of the rental unit.

The Landlord provided documents containing quotes for the repair and renovation of the rental unit. The Landlord testified that he does not know how long it will take to complete the renovations. He submitted that the contractor requires the unit to be vacant in order to complete the work.

The Landlord proposed that the Tenants could have first right to enter into a new tenancy agreement after the renovations and repairs are completed.

The Landlord issued the Tenant a 2 Month Notice dated February 8, 2017. The reason for ending the tenancy in the Notice states:

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 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants testified that they received the 2 Month Notice on February 2, 2018, and they disputed the Notice by applying for dispute resolution on February 2, 2018.

In response to the Landlord's testimony and evidence, the Tenants submitted that in December 2017, they raised concerns with the Landlord regarding the windows and doors leaking cold air into the unit, and their need to use an electric heater to try and prevent the pipes from freezing up. The Tenant testified that they did not hear back from the Landlord until they received a text message from the Landlord in January 2018, where he raised concern about the electric bill and requested the Tenants to pay more rent.

The parties did not reach an agreement to pay more rent and the Landlord subsequently issued a 2 Month Notice To End Tenancy For Landlord's Use Of Property.

The Tenant testified that the rental unit requires some repairs but is suitable to live in. The Tenant submitted that the windows need replacement and the pipes occasionally freeze and the toilet backs up. The Tennants testified that the laminate flooring is separating in places from the floor, but there is no mould in the bathroom.

The Tenants submitted that there is no reason why they cannot continue living in the rental unit while the Landlord performs the repairs and/ or renovations. The Tenants testified that the unit has two bathrooms and they could work around the Landlords repairs. The Tenants were not in agreement to move out of the rental unit for 1-2 months while the Landlord performed the work.

The Landlord testified that he does not have alternative accommodation for the Tenants and was not interested in putting them up in a hotel for the period of time it would take for repairs and renovations.

The Tenants submitted that the Landlord did not raise any concerns about the condition of the unit until after he issued the 2 Month Notice To End Tenancy For Landlord's Use Of Property.

Section 32 of the Act provides that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

Analysis

The *Act* allows a Landlord to end a tenancy if 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.

While I accept that the rental unit requires repairs, and could benefit from renovation, there is insufficient evidence from the Landlord to establish that the repairs require the rental unit to be vacant. I find that the replacement of windows and some flooring, and the other repairs mentioned does not necessarily require the rental unit to be vacant. The Tenants indicated the rental unit is livable and would accommodate the repairs. In addition, the quotes provided by the Landlord were all dated after the 2 Month Notice was issued, and none of the quotes indicate that the contractor has a requirement that the rental unit be vacant in order to perform the work.

I find that a number of the repairs appear to be the responsibility of the Landlord pursuant to section 32 of the *Act*. The Landlord inherited the rental unit and tenancy and has an obligation to maintain the residential property.

There is insufficient evidence from the Landlord that the rental unit needs to be vacant in order to renovate or repair.

I set aside the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated February 2, 2018.

I order the tenancy to continue until ended in accordance with the *Act*.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

There is insufficient evidence from the Landlord that the rental unit needs to be vacant in order to renovate or repair.

The Tenants' Application is successful. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 2, 2018, is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: April 06, 2018

Residential Tenancy Branch