



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS CNL ERP OLC FFL MNDCL OPL

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlords’ Use of the Property pursuant to section 49;
- an Order directing the landlords to comply with the *Act* pursuant to section 62;
- an Order directing the landlords to perform emergency repairs to the rental unit pursuant to section 33; and
- an Order allowing her to assign or sublet the rental unit pursuant to section 65.

The landlords seeks:

- an Order of Possession for Landlords’ Use of the Property pursuant to section 55;
- a monetary order for loss under the *Act* pursuant to section 67; 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 testimony, to make submissions and to call witnesses. The tenant represented herself at the hearing, while counsel, C.W. attended for the landlords.

The tenant confirmed receipt of the landlords’ 2 Month Notice to End Tenancy (“2 Month Notice”), the application for dispute and the landlords’ evidentiary package, while counsel for the landlords confirmed receipt of the tenant’s application for dispute and evidentiary package.

Issue(s) to be Decided

Can the tenant cancel the landlords’ 2 Month Notice? If not, are the landlords entitled to an Order of Possession?

Can the landlords recover a monetary award?

Should the landlords be directed to comply with the *Act*?

Should the landlords be directed to make emergency repairs to the rental unit?

Is the tenant entitled to sublet or assign her tenancy?

Can the landlords recover the associated filing fee for the application?

Background and Evidence

It was explained to the hearing that this tenancy began in September 2017 when the home was purchased by the landlords through a foreclosure proceeding. A Master with the British Columbia Supreme Court made an Order on November 8, 2017 which held that the tenant was to have a fixed-term tenancy that was to end on February 1, 2018. Rent was established at \$1,800.00 per month, and no security deposit was paid, or is currently held by the landlords.

On February 24, 2018, the landlords served the tenant with a 2 Month Notice. The reasons cited on the 2 Month Notice are as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child); and*
- *The landlord has all of 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 tenant disputed 2 Month Notice issued to her by the landlords, questioning the good faith of the Notice and questioning the true intentions of the landlords. She explained that following the conclusion of her tenancy on February 1, 2018, the tenant was offered several opportunities by the landlords' son to remain on the property, provided she agreed to a new tenancy with a drastically increased rate of rent. The tenant said that at one point in January 2018 the parties had agreed to an increased rent of \$2,600.00 but that this offer was subsequently withdrawn. The tenant supplied a copy of proposed tenancy agreement which showed the rental unit being offered to the tenant for \$3,500.00 starting February 1, 2018. The tenant said that she and the landlords' son could not reach an agreement on a new tenancy, and she therefore continued to pay the rent of \$1,800.00 per month.

Counsel for the landlords explained that the 2 Month Notice was given to the tenant because the landlords' son had recently become engaged, and he required a home for his new family. Counsel said that the son is currently living with his parents, and that it made little sense for him to continue in this arrangement when they had a home available for him to occupy. As part of her evidentiary package, counsel supplied an affirmed affidavit which she said spoke to the son's true intentions. A review of this affidavit signed by landlord D.D. noted, "In the first week of February, our son requested to move into our newly acquired home on full-time basis as soon as possible, and prior to the commencement of the renovations so he can help monitor and assist in directing the renovation work." This affidavit continued by stating, "In mid-February, I and my wife agreed to allow our son to reside in our new property on a full-time, permanent basis. He currently resides with us in our family home. On or about 19/February/2018, we advised our lawyer to prepare the required notices and documentation, and serve the Tenant with the same...In March 2018 he got engaged to his girlfriend. He advised me and my wife that he and his fiancé will be starting their own family in the near future."

The second reason cited by the landlords on the 2 Month Notice was because extensive renovations were required in the rental unit. Counsel for the landlords submitted a detailed letter from a contractor dated May 9, 2018 which explained the work that was required in the rental unit. It notes that the needs of the home include:

- Replace flooring throughout
- Repaint the interior of the home
- Repair or replace broken interior and exterior doors
- Inspect plumbing, as it may not be to code
- Inspect electrical work, as it may not be to code
- Inspect window seals
- Install exterior stairs and landing
- Assess exterior stucco damage

In addition to the items listed on the letter provided by the contractor, counsel stated that the rental unit would most likely be without water for some time as the renovations would almost certainly involve the water being shut off. It was the landlords' position that it would be untenable to continue the tenancy during construction as a significant amount of work was scheduled to be performed on the rental unit.

Along with their application for an Order of Possession, the landlords are seeking a monetary award of \$493.75 for bailiff services which the landlord hired to serve documents and notices to end tenancy on the tenant.

The tenant has applied not only for a cancellation of the landlords' 2 Month Notice, but also for Orders directing the landlords to comply with the *Act*, for emergency repairs to the rental unit and for an Order allowing the tenant to sublet and assign her tenancy.

At the hearing, the tenant detailed numerous concerns she had related to the safety of the rental unit and the lack of action that the landlords had taken in relation to these matters. In particular, the tenant cited broken fire alarms and a number of broken door knobs. Counsel for the landlords said that no information had been provided to her regarding these matters, and little evidence was before her that spoke to efforts the tenant had taken to contact the landlords about these repairs.

The tenant said she also sought an order to sublet and assign her tenancy. When asked to detail this, the tenant explained that a tenant and her child had rented a small unit located in the basement of the rental unit. This person paid rent directly to the tenant, and the applicant tenant sought an Order allowing her to continue with this arrangement. Counsel for the landlords objected to this application, saying that a municipal by-law prevented this type of rental scenario and the landlords felt uncomfortable with the arrangement that the tenant had pursued.

Analysis

I will begin by analyzing the 2 Month Notice to End Tenancy and then will turn my attention to the remainder of the parties' applications.

The landlords have applied for an Order of Possession based on a 2 Month Notice, while the tenant has applied to cancel this notice. During the hearing the tenant questioned the good faith of the notice, arguing that the landlords' son had no intention to occupy the rental unit and questioning whether she in fact needed to vacate the rental unit for the proposed renovations.

Subsection 49(3) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

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

A claim of good faith requires honesty of intention with no ulterior motive...

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.

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering the oral submissions of both parties and after having closely reviewed the evidence submitted by each party, I find that the landlords have failed to show they had “good faith” in issuing the 2 Month Notice to the tenant. At the hearing, counsel for the landlords argued that the 2 Month Notice was issued to the tenant because the landlords’ son intended to occupy the rental unit and because renovation works were required in the rental unit. I find this argument problematic because of information contained in an affidavit signed by landlord D.D. and submitted as evidence.

This affidavit notes that the son intended to live in the rental unit while the renovations were being performed, yet one of the reasons cited on the 2 Month Notice was that the tenant could not occupy the unit because of these renovations. Furthermore, evidence was presented by the tenant that the landlords’ son attempted to renegotiate the terms of their tenancy after the conclusion of their fixed-term tenancy. Almost immediately after negotiations between the parties broke down, the landlords informed their counsel to issue a 2 Month Notice to the tenant. I find the timing of these instructions to be highly suspicious. If the landlords’ son had truly desired to occupy the rental unit, the parties never would have entered into any discussion to extend the tenancy. Finally, counsel for the landlords explained that the landlords’ son had recently become engaged, and that he and his fiancé required the rental unit so they could start their own family. While I do not doubt that the son is now engaged, I find based on a reading of the affidavit that this

occurred *after* the issuance of the 2 Month Notice and therefore should not be considered as evidence of the landlords' use.

The tenant was successful in cancelling the landlords' 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

In addition to an application for an Order of Possession, the landlords have applied for a monetary award related to the expenses they incurred using a process server to serve the tenant with the various documents related to this dispute. I find that this was an unnecessary expense that was incurred by the landlords and that they have no recourse under the *Act* to recover these expenses. Section 88 and 89 of the *Act* provide numerous ways for parties to serve evidence and applications for dispute to another party. The use of a process server is not a requirement under the *Act*, and the costs associated with using this service must therefore be absorbed by the landlords.

I now turn my attention to the tenant's applications for an Order allowing her to sublet and assign her tenancy, along with Orders directing the landlords to comply with the *Act* and for emergency repairs to be made on the rental unit.

The tenant argued that she should be granted an Order to sublet and assign her tenancy because of an ongoing rental agreement she has with a sub-tenant that lives on the lower floor of the property. The tenant asked that this Order be given so that the sub-tenant may continue their tenancy uninterrupted. Counsel for the landlords objected to this request, noting that municipal by-laws prevent this type of rental arrangement.

Residential Tenancy Policy Guideline #6 discusses the issue of assignment and sublet of rental units noting, "A tenant may assign or sublet their interest in a tenancy agreement with the prior written consent of the landlord." This *Guideline* continues by stating, "An arbitrator may find that a landlord has acted reasonably for withholding consent to assign a periodic tenancy, unless the tenant can demonstrate a compelling reason why the landlord should agree to the assignment. The circumstances of each case would have to be examined."

I find the landlords' decision to deny the tenant an opportunity to assign or sublet the rental unit to be a reasonable one. Counsel for the landlords explained that if the tenant were permitted to sublease the bottom unit of the home, the landlords would be in contravention of municipal by-laws. I find this to be a plausible reason for withholding consent to assign or sublet the tenancy. For these reasons, the tenant's application for an Order to assign or sublet the tenancy is dismissed.

During the hearing, the tenant explained that many items in the rental unit required repair, and she said her numerous attempts to contact and remind the landlords of their obligation to repair the unit had failed to produce a satisfactory outcome. Counsel for the landlords disputed the notion that the landlords had been made aware of any required repairs. After considering the oral testimony of both parties, I decline to make an Order directing the landlords to comply with the *Act* or to perform emergency repairs. I will remind the landlords of their obligations under section 32 of the *Act* which state, "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."

As the landlords were unsuccessful in their application, they must bear the cost of their own filing fee.

Conclusion

The tenant was successful in cancelling the landlords' 2 Month Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlords' application for a monetary award is dismissed.

The tenant's application for an Order allowing her to sublet and assign the tenancy is dismissed.

The tenant's application for an Order directing the landlords to comply with the *Act* and perform emergency repairs is dismissed.

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: May 30, 2018

Residential Tenancy Branch