



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for landlord's use of the property. The tenant also applied for compensation in the amount of \$30,000.00 for repairs done by him and for the increase in the equity of the landlord's home. The tenant applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. Both parties represented themselves. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's application for dispute resolution and evidence.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in December 2015. The tenant pays \$625.00 per month. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord testified that the tenant viewed the rental unit in December 2015 and decided to rent it. He did not point out any problems with the unit prior to moving in.

The parties agreed that at the start of the tenancy, the carpet was heavily stained. The landlord stated that she had had the carpet professionally cleaned but the tenant was not satisfied with the standard of cleaning and asked for permission to redo the shampooing of the carpet. The landlord agreed and gave the tenant a \$100.00 deduction off rent. The landlord testified that the tenant did not provide her with a receipt.

The parties offered contradictory testimony regarding the replacement of the flooring. The landlord testified that despite having paid \$100.00 to the tenant to shampoo the carpet, the tenant removed the carpet without her permission and asked her to replace it with laminate. The landlord stated that due to personal problems in her marriage, she did not have the finances to do so and when she informed the tenant, he threatened to take her to arbitration.

The tenant offered a different version of events. He stated that the landlord requested him to remove the carpet and agreed to replace it with laminate at her cost. The tenant denied having threatened the landlord with arbitration.

The landlord stated that since the carpet had already been removed she was left with no choice other than to have the tenant install laminate. The landlord testified that since she did not have the funds to pay for it, she agreed to allow the tenant to stay rent free for two months. Accordingly the tenant did not pay rent for February and March 2016. The tenant denied having received two months' rent free stay and stated that he received only one month of rent free stay as compensation for the materials and labour to install the laminate.

The landlord testified that after the flooring was installed, the tenant then started to complain about the paint in the unit and requested the landlord to have it painted. The landlord stated that she was getting frustrated with the ongoing requests of the tenant but to keep the peace she agreed to allow him to paint the unit. The tenant made a deduction of \$350.00 from rent for May 2016 to cover the cost of materials and asked the landlord to provide him with a \$25.00 deduction off rent up to December 2017 for his labour. The landlord stated that the tenant was getting increasingly aggressive in his demands and interactions with her and therefore, she reluctantly agreed.

The parties agreed that the laminate installation and the painting of the rental unit were complete in April 2016. The tenant continued to receive a \$25.00 deduction off rent until December 2017.

The landlord testified that her marriage officially ended in October 2017 at which time she needed to refinance her home to pay her ex-spouse for his share of the home. The landlord filed documents to support her testimony that after the refinancing, starting January 2018, her mortgage payments went from \$1,265.00 to \$1,733.00.

The landlord stated that with the increased mortgage payments, she began to have financial difficulties as a single parent with a ten year old child. The landlord's mother assisted her in staying with the child when the landlord worked at night. The landlord stated that in order to increase her monthly income, she decided to move into the basement and rent the upper portion of the home.

The tenant stated that in early February, the landlord met him and told him that she wanted him to move out. The tenant stated that the landlord had a one month eviction notice in her hand which she did not serve on him when he told her that he was going to dispute it. The tenant stated that he believes that the reason for the one month notice was for disturbances caused by the tenant.

The landlord stated that she was not familiar with which notice would be appropriate and after obtaining information from the Residential Tenancy Branch, on February 25, 2018, she served the tenant with a two month notice for landlord's use of property

Neither party filed a copy of the notice to end tenancy but the tenant provided information on the notice. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

The tenant stated that he believed that the notice was served in bad faith because the landlord intended to re rent the unit at a higher rent. The tenant agreed that he had received compensation pursuant to s. 49 notice by not paying rent for April 2018.

The tenant has also made a monetary claim for \$30,000.00 and testified that this claim is made up of two parts. The first part of \$3,700.00 is for what the tenant believes he is owed for the work he did in 2016 to install laminate and to paint the rental unit.

The second portion of the claim is for \$26,300.00 for the increase in the equity of the rental unit that was brought about by the renovations carried out by the tenant.

Throughout the hearing the tenant was disruptive, constantly interrupted both the landlord and myself and called the landlord a liar – multiple times. I cautioned the tenant that antagonistic and inflammatory comments and remarks would not be permitted during the hearing. I also encouraged the tenant to provide succinct and factual responses to the questions posed to him with a view to concluding this proceeding in a timely manner.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. Based on the sworn testimony of the landlord, I accept the landlord's testimony that her marriage ended and that she was required to refinance her home to provide her ex with his share of the marital property.

The landlord filed bank documents that support her testimony of when the refinancing was completed. The landlord testified that she was required to make minimum interest only payments in December 2017 and that effective January 2018, her mortgage payment went from \$1,265.00 to \$1,733.00.

I further accept the testimony of the landlord that being a single parent; she is facing considerable financial hardship even though she works two jobs and uses the services of her mother to take care of her child at no cost to her. I find that the landlord intends to move herself and her child into the basement suite for the purpose of increasing her monthly income by renting out the upper level of the home.

The tenant argued that the landlord had failed to act in good faith and has no intention of moving into the basement. The tenant stated that the rents in the area had increased dramatically and he believes that the landlord wants to rent out the basement for a higher rent. The tenant referred to the one month notice that the landlord had in her possession in early February 2018 but did not serve on the tenant, when he informed her that he would dispute the notice. The tenant stated that the landlord was looking for a way to evict the tenant for the sole purpose of re-renting the unit at an increased monthly rent.

In the absence of sufficient evidence to support this allegation of bad faith; I find the landlord has met the good faith requirement of the legislation and intends to move into the rental unit to alleviate her financial hardship. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) The landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) The director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy for landlord's use of property. Since the landlord has met the good faith requirement, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The *Residential Tenancy Act* is designed in part to address a power imbalance between parties, clearly defining the rights of landlords and tenants and preventing one party from taking advantage of another. Based on the copies of text messages between the two parties that were filed into evidence, I find that the tenant was verbally abusive and used racial slurs against the landlord and her daughter. The landlord testified that she felt constantly intimidated by the tenant and was forced to grant all his demands for fear of retaliation.

Regarding the tenant's claim for compensation for the work done in April 2016, I find that based on the testimony of both parties and the documents filed into evidence, the parties came to an agreement whereby the tenant was compensated by living rent free for the months of February and March 2016, the tenant made a deduction of \$350.00 off rent for May 2016 and then paid a reduced rent of \$600.00 (instead of \$625.00) for a year and 7 months, until December 2017.

The landlord testified that the home was built in 2010 and that the rental unit was 500 square feet in size. Based on the above I find that the tenant received a total of \$2,075.00 in rent free stay to cover the cost of the work he did to install laminate and paint the rental unit. I further find that the work was completed in April 2016 which is about two years prior to the tenant's application for compensation. Since the tenant has already received compensation as per the verbal agreement between the parties, I find that I must dismiss the tenant's claim for compensation in the amount of \$3,700.00.

The tenant has also applied for \$26,300.00 which he believes is the increase in the value of the property that was brought about by the work done by him, namely the installation of the laminate and the painting of the rental unit. The tenant is not entitled to any equity in the property as he has no interest in the property.

The tenant has not proven his case and must bear the cost of filing his application.

During the hearing I informed the landlord about section 51(2)(a) of the *Residential Tenancy Act* which states that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 (landlord's use of property) within a reasonable period after the effective date of the notice, or section 51(2)(b) which states that if 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant. The remainder of the tenant's application is dismissed without leave to reapply.

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