



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application or any evidence submitted by the parties.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee?

Background & Evidence

The tenancy for this apartment unit began on November 15, 2012. The current monthly rent is \$1440.00 and is payable on the 1st day of each month.

The landlord served the tenants with a 2 Month Notice on March 08, 2018. The 2 Month Notice was issued on the grounds that the landlord intends to renovate or repair

the rental unit in a manner that requires the rental unit to be vacant. The tenants' application to dispute the 2 Month Notice was filed within the time period required under the Act.

A.W. testified on behalf of the landlord that they intend to do major renovation to the rental unit. A.W. clarified that they were not major in the sense that they do not require permits but do require the rental unit to be vacant. A.W. testified that it has been 6 years since any renovations were completed and they would like to get in there to do some now.

The landlord P.S. further testified that WorksafeBC does not permit the landlord to do renovations unless the unit is vacant. P.S. testified that they intend to change all the floors, paint the entire unit including the ceilings, complete all required repairs and change some lighting.

The tenants are disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenants do not deny that the landlord intends to do renovation work but submit that the landlord only wants to do so in order to collect more rent. The tenants further argue that for the planned work the landlord does not require the rental unit to be vacant. The tenants submit that as no permits are required for the work it is mostly just cosmetic. The tenants further submit that after being served with the 2 Month Notice, they sent an e-mail to the landlord asking to be moved into unit #109 which was just recently vacant. The tenants submit they received no response from the landlord. The tenants submit that they were willing to temporarily relocate if necessary. The tenants submit that the tenants of unit #109 were issued a similar 2 Month Notice at the same time. The tenants of #109 vacated as they found alternative accommodation; however, the landlord completed all renovation work on that unit within one week and new tenants were moving in.

The tenants further submit that there is nothing major wrong with the rental unit, there is no need for the work to be done now and that they have made no complaints to the landlord.

In reply, A.W. submits that the landlord did not know the state of unit #109 and how long the renovation work would take until they got in there.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute

resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The landlord provided very little evidence and very little testimony in support of the grounds for issuing the 2 Month Notice. The only evidence submitted on file from the landlord was an e-mail from the City Plumbing Inspector advising that permits were not required for "maintenance and repair work" to this unit. The e-mail did not contain any specifics of the planned renovation work. Further, the landlord's testimony was very brief and lacked detail. The landlord P.S. repeatedly stated that the renovation work planned was "change flooring and whatever". Only when asked by myself to provide further details did the landlord state that the work included painting, all repairs and some lighting. The landlord still failed to provide any details on the scope of the repairs, any details on how the scope of the flooring and painting work such as the amount of work and how long the work was expected to take. The landlord did not provide any pictures of the rental unit supporting that the renovation work was required. The landlord did not submit any evidence in support of his argument that WorksafeBC requires the unit to be vacant for the scope of the renovation work planned. The landlord also did not dispute the tenants' testimony and evidence that unit#109 was renovated within one week. Rather, the landlord testified that they were not aware of the scope of the work required in that unit until after it was vacated. This in addition to the lack of detail in the landlord's testimony leads me to believe that the landlord is also not sure of the scope of work required to the unit in question.

Based on the above, and given the fact the tenants were willing to temporarily relocate, I find the landlord has provided insufficient evidence that the planned renovation and repair work is of such a nature that it requires the rental unit to be vacant for more than just a temporary period.

I allow the tenants application to cancel the landlord's 2 Month Notice, dated March 3, 2018.

As the tenants were successful in this application, the tenants are entitled to recover the \$100.00 filing fee. This amount may be deducted from a future rent payment.

Conclusion

I allow the tenants application to cancel the landlord's 2 Month Notice, dated March 3, 2018, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: June 05, 2018

Residential Tenancy Branch