



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated April 22, 2018
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was served on the Tenant by posting on April 22, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail on May 4, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated April 22, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 1, 2006. The present rent is \$817 per month payable in advance on the first day of the month. The tenant paid a security deposit of \$375 at the start of the tenancy.

The present landlord purchased the rental property in February 2015. There are 10 rental units in the rental property.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

Landlords' Evidence:

The landlord seeks to end the tenancy based on the following evidence:

- He and his wife have acted as caretaker/managers for the last 3 years and have found it difficult to keep up with the work and a full time caretaker/manager is necessary. He and his wife live in Coquitlam and the rental property is in Vancouver. They are unable to keep up with the demands of caretaking the property given his other work commitments. His wife is pregnant and this will limit what she will be able to do.
- He has had a positive relationship with most tenants including the Applicant. The eviction of the applicant is not personal and is required in order to properly maintain the building.
- He denied the tenant's allegation that this is a ruse or tactic to get rid of the tenant for other reasons. He acknowledged he had a discussion with the tenant two weeks prior to the service of the 2 month Notice about increasing the rent to an amount that exceeds the prescribed rental increase. However, he submits the rent paid by the tenant is very low. The Residential Tenancy Act permits the parties to increase the rent to more than the prescribed amount if the parties agree in writing. He has not done anything that is contrary to the Act.
- He has a caretaker to take move into the rental unit when this tenancy comes to an end.
- The tenant's material refers to a dispute with a previous tenant KC. That case did not involve the ending of the tenancy for the purpose of a landlord moving in a caretaker. KC voluntarily gave notice and vacated. The dispute that was heard by the RTB involved an application for the return of the security deposit.

The tenant gave the following evidence:

- The tenant disputed the testimony of the landlord that she has a positive relationship with them. They only provided the tenant with a new stove after the landlord threatened to make a claim with the Residential Tenancy Branch.
- The Notice to End Tenancy was only given by the landlord after the Tenant refused the landlord's request to raise the rent more the allowable amount which is 4%. Her present rent is \$817 per month. The landlord demanded that the rent be increased to \$900 per month.
- She testified she would be prepared to pay the increased rent provided that the landlord improved service.
- The tenant produced an e-mail thread between her and KC. The tenant e-mailed KC asking whether she was evicted in 2016 after she refused to pay an increase and then received a Notice to End Tenancy to the effect that the apartment was going to be used as a caretaker or building manager suite. The thread indicates KC responded saying "Yes, all this true, except that it happened in the fall of 2015." The email thread indicates the amount of the monetary order obtained by KC and that the landlord paid a lesser amount.
- The tenant further testified there was a caretaker who lived in the building but was dismissed and subsequently evicted when the landlords took possession of he rental unit.
- Witness #1 gave the following evidence:
 - The building is not properly maintained.
 - She agreed to pay more than the allowable limit when her rent was increased from \$875 to \$90 per month.
 - She gave the landlord written notice on May 29, 2018 that she would be vacating her rental unit on June 30, 2018.
 - She testified her rental unit is the same as the tenant's and asked why landlords do not put the caretaker into her rental unit when she vacates on June 30, 2018 if they have a good faith intention to move in a caretaker.
- Witness #2 testified he is the boyfriend of Witness #1. He has witnessed the landlord yelling and screaming at the tenants. Further the tenant is not properly maintained.
- Witness #3 testified he is the boyfriend of the tenant. There is a theme that is occurring here with the landlord threatening and intimidating the Tenants.

The landlord responded to the evidence of Witness #1 saying that he considers the end of tenancy of Witness #1 is a separate matter to the need for the caretaker to be put into the applicant's unit. The rental unit presently occupied by Witness #1 is to be occupied

by a family member. He disputes the testimony of the tenant and her witnesses that KC was forced to leave.

Policy Guideline #2 includes the following:

LEGISLATIVE FRAMEWORK

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act² allows a landlord to end a tenancy if the landlord intends in good faith to:

- provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;

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GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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

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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 they do not have an ulterior motive for ending the tenancy.

Analysis:

After carefully considering all of the evidence I determined the landlords failed to establish a good faith intention to use the rental unit for the stated purpose in the Notice to End Tenancy for the following reasons:

- The landlords' good faith has been called into question and they have the burden of proof to establish sufficient cause to end the tenancy.
- I accept the submission of the landlord that much of the evidence produced by the tenant and her witnesses as to the problems with maintaining the rental unit supports the landlords' position that they are no longer able to properly maintain the rental property.
- However, the landlords failed to sufficiently explain why they did not agree to use the rental unit of Witness #1 to house the caretaker. The two units are very

similar. I do not accept the explanation of the landlord that he considered this to be two separate situations. The landlords became aware the tenants were disputing the 2 month Notice to End Tenancy in early May. They received the notice of Witness #1 she was vacating her unit on June 30, 2018 at the end of May.. There was no reason why the landlords could not have used that unit for the caretaker.

- The landlords failed to provide documentary evidence to corroborate their testimony they have rented the rental unit of Witness #1 to a family member or that they have entered into an employment agreement with a caretaker.
- The landlord's good faith intention is also brought into question by first demanding a rent increase that exceeds to allowable amount and then serving a 2 month Notice to End Tenancy two weeks after the tenant refuses the landlord's demand.

Determination and Orders:

As a result I ordered that the 2 month Notice to End Tenancy dated April 22, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further order that the landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

This decision is final and binding on the parties.

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 20, 2018

Residential Tenancy Branch