



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2268 CORNWALL AVENUE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This decision pertains to the Tenants' application for dispute resolution made on May 9, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek the following:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice");
2. an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement; and,
3. a monetary order for recovery of the filing fee.

The Tenants and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord's son attended the hearing as a witness, and the Tenants' two daughters attended the hearing as witnesses.

The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Are the Tenants entitled to an order cancelling the Notice?
2. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement?
3. Are the Tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Landlord testified that they issued the Notice because they intend to have their son move into the rental unit. Their testimony was that their son is a young man and it is time that he has his own place to live. The Landlord purchased the multi-rental unit building in November 2018 and submitted that as a Landlord, they have the right to move their family into the rental unit if they wish.

The Landlord's son testified that they intend to move into the rental unit, and in preparation for this move have spoken to movers, and have set up utilities and internet to start on July 1, 2018. The Landlord submitted into evidence copies of emails and other documents indicating internet hookup, email correspondence with a moving company for a move scheduled for July 3, 2018, and a BC Hydro account set up for July 1, 2018. There is a text message conversation between the Landlord and their son in which they discuss the son's moving into the rental unit; the text message conversation is dated April 2 and April 3, 2018.

The Landlord issued the Notice on April 26, 2018, with a tenancy end date of June 30, 2018. A copy of the Notice was submitted into evidence.

The Tenants testified, and argue, that the Landlord issued the Notice in retaliation for the Tenants raising various issues with the building with the Landlord, including a broken intercom, a leaking chimney, a wobbly stairwell handrail, and that there is only one handrail when there should be two, according to the *Building Code*.

The Tenants testified that Tenant E.B. was injured on the stairwell on April 24, 2018. Tenant R.B. spoke to the Landlord on April 25 about the stairwell issue, and on April 26 the Landlord issued the Notice. The conversation between the Landlord and Tenant R.B. on April 25 is of note. On that date, the two conversed about the various repairs and maintenance to the building. R.B. told the Landlord about chimney repairs, and "about specific injuries caused by the outstanding maintenance items." The Tenants' written submissions indicate that the Landlord then "terminated the conversation by abruptly walking away". The Tenants submit that the timing of the Notice being issued is not coincidental, and suggests malice and lack of good faith on the part of the Landlord.

The Tenant's witness N.B. testified that they were present when the Landlord and a group of real estate agents were visiting the building, and overheard conversation regarding how much more rent the Landlord could get if the Tenants moved out.

The Landlord submitted, in rebuttal, that they only spoke with Tenant R.B. on two occasions and once was regarding the leaking chimney. The Landlord testified that this is the first time that they have heard of these other issues. They reiterated that while they are sympathetic to the Tenants' position in terms of wanting to remain in the rental unit, they gave the Notice because their son wants to move in. If the son cannot move into the rental unit, the Landlord is uncertain as to where the son is going to go. The Landlord further submitted that "almost all of the information [in the Tenants' document package] is false," without further elaboration.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (3) of the Act states that a "landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." A "close family member" means, in relation to an individual, the individual's parent, spouse or child.

The issue in this case is whether the Landlord intends, in *good faith*, to have their son occupy the rental unit. Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. (See *Residential Tenancy Policy Guideline 2. Ending a Tenancy: Landlord's Use of Property*)

When the issue of an ulterior motive or purpose for an eviction notice is raised, or if the good faith intent of a landlord is called into question, the onus is on the landlord to establish that they are acting in good faith (*Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

It is clear that the parties have what can only be described as an acrimonious relationship. The Tenant R.B. and the Landlord had a rather heated exchange on April 25 regarding the stairwell and chimney issues. The Landlord issued the Notice on April

26. However, the Landlord has provided documentary evidence which supports their position that they took steps to have their son move into the rental unit earlier in April and submitted evidence to support their intention. Included in this evidence is a text conversation between the Landlord and the son that occurred almost two weeks before the heated conversation, reflecting the Landlord's intent.

Taking into consideration all the evidence and the testimony of the parties, including that of their witnesses, presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the grounds on which they issued the Notice. The Tenants have raised the issue of whether the Landlord issued the Notice in good faith. The Landlord established, through testimony and documentary evidence, that they do not have another purpose for ending the tenancy. I am not persuaded by the Tenants' argument that the tenancy was ended as retaliation for one heated conversation or other grievances purportedly having to do with building maintenance issues.

As such, I dismiss the Tenants' application for an order cancelling the Notice.

Section 55 (1) of the Act states the following:

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.

As I have dismissed the Tenants' application, I grant the Landlord an order of possession of the rental unit. This order is effective two days from the date that the Landlord serves the order upon the Tenants.

I advise the Landlord of requirement to compensate the Tenants pursuant to section 51 (1) of the Act when ending a tenancy for landlord use of property.

Regarding the Tenants' application for an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement, there was insufficient evidence demonstrating what was required to be done. The Tenants testified that the stairwell handrail was wobbly, but did not provide any evidence of this. They testified that the

stairwell was in violation of the *British Columbia Building Code*, but did not point me to how it was in violation and therefore what the Landlord was required to do. The Landlord testified that they were unaware of the various issues raised during the hearing.

Taking into consideration all the evidence and the testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenants have not met the onus of proving why they are entitled to an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement. As such, I dismiss that aspect of the Tenants' claim.

The Tenants are not entitled to recovery of the filing fee.

Conclusion

I dismiss the Tenants' application for an order cancelling the Notice. The Landlord is granted an order of possession. This order must be served on the Tenants and is effective two days after service upon the Tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I dismiss the Tenants' application for an order requiring the Landlord to comply with the Act, regulation and/or the tenancy agreement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 (1) of the Act.

Dated: June 29, 2018

Residential Tenancy Branch