



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FFL, MNRL-S-OPL

Introduction:

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the two month Notice to End Tenancy dated March 31, 2018.

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

- a. An Order of Possession for landlord use
- b. A monetary order in the sum of \$429.95
- c. 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 2 month Notice to End Tenancy was personally served on the Tenants on March 31, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 2 month Notice to End Tenancy dated March 31, 2018?
- b. Whether the landlord is entitled to an Order of Possession?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in 2012. The tenancy agreement is oral. The parties do not agree as to how much the rent is. The landlord testified it is \$2500 per month payable in advance on the first day of each month. The tenant testified it is \$1350 payable in advance on the first day of

each month. The landlord testified the tenants paid a security deposit of approximately \$800. The tenant testified the security deposit was \$650.

Grounds for Termination:

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

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Policy Guideline #2 includes the following:

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. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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

Evidence of the Landlord:

The landlord JSW gave the following evidence on behalf of the landlord:

- He and his bother JT have owned the rental property since around 2000. Both are listed as registered owner on the land title documents.

- He is presently living in another house with his brother JT and his family. There are 10 people living in a 5 bedroom house.
- He moved into the other house with his brother in order to save money to send their children to university.
- He has two adult children aged 27 and 29. Both are dentists. His son recently graduated from the University of Toronto and has returned home. He is sleeping in the family room.
- His brother has three adult children who are presently living at home and attending school.
- His mother (who is 83) is living with he and his brother and she is presently sleeping on the couch in the living room.
- He produced records that indicate he has put hydro and gas into his name at the address of the rental unit.
- He and his wife recently renewed their drivers licence and they have put the address of the rental unit as where they reside.
- The present location where he and his brother and their families reside is too crowded and he wishes to regain possession of the rental unit.
- The tenant has not paid the rent for May 2018 and June 2018.
- His brother RT attended the hearing and confirmed this evidence.

The tenant gave the following evidence:

- He has lived in the rental unit since 2012. He has never meet JSW and the only landlord he has dealt with has been JT.
- He testified the rent has been \$1350 with a deposit of \$675.
- The landlord attempted to increase the rent to \$2000 per month. He contacted the Residential Tenancy Branch and they told him the maximum increase that could be imposed was 4% or \$54 per month.
- He has been paying \$1500 per month since October 2017. He spent 4 months overseas starting in December 2017 and returning in March 2018 and paid \$6000 in advance.
- It is not fair that the landlord would move into the rental unit at this time. The landlord could have told him about their intention and he could have put his goods in storage at a much cheaper rate.
- RT has told him he has no intention to move into the property and needs to increase the rent.
- He has not paid the rent because the landlord failed to collect it.
- SKV lives in a rental unit in the basement. She testified that JST also know as RT came to her house as said he intended to evict the tenant from the main level of the home as he is not happy with the amount of rent. He further stated he will rent the upper part of the house to someone else.

Analysis:

After carefully considering all of the evidence I determine the landlord has a good faith intention to move into the rental unit and use it for family purpose for the following reasons:

- The evidence of RST was consistent and logical. It is reasonable that an owner might move out of his family residence in order to rent it so that money can be obtained to assist his adult children to go to university. It is also reasonable that an owner might want to move back into the rental unit once the adult children have completed their university and are moving back to the area.
- The explanation that his present living condition with his brother is crowded with 10 people living in a property that has 5 bedrooms might cause a landlord to attempt to regain possession of the property he has rented so that he and his family have sufficient living space.
- The landlord has taken steps to put utilities from the property back into his name and also he has changed the used the address when he renewed his drivers licence.
- I accept the evidence of the landlord and determined JST and his family have a good faith intention to move back into the rental unit.
- The evidence of the tenant and the tenant's witness is problematic. That evidence was given on the basis that JST and RT is the same person. It appears this is incorrect and that they are brothers.
- The evidence of the tenant about the landlords' intention to increase the rent is relevant but is not inconsistent with a subsequent decision of the landlord to move back into the rental unit. I determined that despite the conversation RT had with the tenant and the tenant's witness, the landlord RST has a good faith intention to move back into the rental unit.

Tenants' Application:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy. I order that the tenancy shall end.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 7 days notice..

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Landlords' Application:

For the reasons set out above I granted an Order of Possession on 7 days Notice.

I dismissed the landlords' monetary claim of \$429.95 for the cost to replace a hot water tank as the landlord failed to provide sufficient evidence to prove that the damage was caused by the tenants.

As the landlord was successful with this application I ordered that the Tenants pay to the landlord the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

Conclusion:

In summary I dismissed the Tenant's application for an order to cancel the 2 month Notice to End Tenancy and I granted an Order of Possession on 7 days notice. I granted the landlord's application for an Order of Possession. I dismissed the landlord's claim for a monetary order. I ordered that the Tenants pay to the landlord the cost of the filing fee in the sum of \$100 such sum may be deducted from the security deposit.

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 14, 2018

Residential Tenancy Branch