



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RP

Introduction

On September 11, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use, for a Monetary Order for compensation and an order for the Landlord to make repairs. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Although both parties submitted their evidence late, they all agreed to proceed with the hearing and admit the evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants applied for Dispute Resolution to address the cancellation of a Notice to End Tenancy and to deal with a monetary claim and an order for repairs. The Tenants agreed that the tenancy was the priority issue. As the Monetary Order and order for repairs were unrelated to the end of tenancy issue, I severed these two issues from the Tenants’ Application in accordance with Section 64(3) of the Act. The Tenants may choose to reapply for Dispute Resolution in regard to these issues at a future date.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated August 28, 2018 (the "Notice"), be cancelled, pursuant to Section 49 of the Act?

If the Notice is cancelled, should the Landlord receive an Order of Possession, pursuant to Section 55 of the Act?

Background and Evidence

The Landlord and the Tenants agreed on the following terms of the tenancy:

The six-month, fixed term tenancy began on October 21, 2016 and continued on as a month-to-month tenancy. The monthly rent is \$1,200.00 and is due on the first of each month. The Landlord collected and still holds a \$600.00 security deposit and a \$600.00 pet damage deposit.

Landlord Evidence:

The Landlord testified that the Tenants have been having trouble paying their rent on time and this is one of the first reasons that she is ending the tenancy. The Landlord thought that she was being kinder by providing a two-month notice rather than a one-month notice for late rent.

The Landlord stated that her current home (in a different city than the rental unit) requires many repairs and that her plan is to move into the rental unit for about one year. The Landlord said that her mother lives in the same city as the rental unit and she (the Landlord) wants to live closer to her family and to her business as she has three rental units in that city.

The Landlord testified that she sent the Notice to the Tenants via courier and that the Tenants received the Notice on August 30, 2018. The move out date on the Notice is for November 1, 2018 and it was issued as the Landlord plans on moving into the rental unit.

The Landlord acknowledged that the Tenants sent her a letter claiming that the rental unit required repairs. The Landlord issued the Notice a few days later.

Tenants' Evidence:

The Tenants testified that the Landlord issued the Notice in bad faith. The Tenants stated that they had sent a letter to the Landlord on August 27, 2018, that noted some issues regarding the heat pump, heating of the rental unit and the current cost of hydro. The Landlord responded with the Notice to end tenancy two days later. The Tenants stated that the Landlord is attempting to avoid dealing with the repairs of the rental unit and in response, issued the Notice.

The Tenants stated that the Landlord has two empty rentals in the city and feel that the Landlord has choices of where she can move without displacing a family of five.

The Tenant stated that they had only paid their rent late a couple of times over the last two years and that was because of some administrative errors with their bank. The Tenants are requesting to continue their tenancy until they can find a new home.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit.

The *Residential Tenancy Policy Guidelines #2* (the "Guidelines") discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

The Tenants brought the good faith intent of the Landlord into question by directly relating the Notice to a letter they sent to the Landlord only a few days prior, that discussed concerns the Tenants had about the heating of the rental unit and other repairs that were required. The Landlord acknowledged that she received a letter from the Tenants and within days, issued the Notice.

Where Tenants apply to dispute a Two-Month Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Notice is based and, in this case, that there is no ulterior motive.

I accept the Landlord's testimony that she issued the Notice firstly as a response to the Tenants paying their rent late. There are remedies under the Act for a Landlord to end a tenancy based on numerous failures to pay the rent, as noted by the Landlord when she made reference to the One-Month Notice to End Tenancy for Cause. Issuing a Two-Month Notice to End Tenancy for Landlord's Use of Property is not one of the options to address late payments of rent.

I find that the timing of the Landlord's Notice to end the tenancy soon after the Tenants corresponded with the Landlord about repairs both concerning and relevant regarding the question of good faith. The Landlord did not speak to or provide any evidence to demonstrate that the Notice was issued, firstly, based on her intention to move into the rental unit versus ending the tenancy as a result of the Tenants asking for repairs and paying their rent late. Although the Landlord testified that she intended on moving into the rental unit, I find the Landlord failed to provide sufficient evidence to prove that the Notice was issued in good faith with the intention to occupy the rental unit.

As a result of the above testimony, evidence and findings, I uphold the Tenants' Application and cancel the Notice. I order that the tenancy will continue until ended in accordance with the Act.

Conclusion

The Two-Month Notice to End Tenancy for Landlord's Use of Property, dated August 28, 2018, is cancelled and the tenancy will continue until 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: October 23, 2018

Residential Tenancy Branch