



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on October 4, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

Both parties were present at the hearing and provided testimony. Although there were multiple people present, each side will be referred to as the Landlord and the Tenant, respectively. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. Neither party took issue with the service of these documents.

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.

Issues(s) to be Decided

- Are the Tenants entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on August 2, 2018. The Landlords issued the Notice for the following reasons:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In the hearing, the Landlords stated that they are husband and wife and are 50% owners of the property, and the husband's father co-owns the property with them. The Landlords stated that this rental unit is part of an 8-plex, 4 of which are upper units, and 4 of which are lower units. One of the Landlords stated that his wife is pregnant, and they are looking to move into the rental unit. The Landlords stated that the rental unit in question is one of the upper units, and although there are vacant lower units, they have chosen this particular unit to move into. The Landlords stated that they have given notice at their previous apartment that they were renting (provided a letter into evidence), and have since moved out under the expectation that they would be able to move into this unit. However, the Tenants have disputed the Notice and the Landlords are now living temporarily in a spare bedroom at their parents' house while they wait for the Tenants to move out.

The Landlords acknowledged that a couple of other renters in this 8-plex have received 2 Month Notices for similar reasons, but the Landlords stated that there are other family members moving into those, all of which are upper units. The Landlords also acknowledged that there are some renovations going on in those other units, after they were vacated due to a 2 Month Notice, but stated that this is all in good faith, and that they just want to make the units nicer before family members move in. The Landlords argue that it is their right to renovate the rental unit before they move in, as long as the time is reasonable. The Landlords stated that they have no intention of re-renting this rental unit, and denied the Tenants' request to stay if they paid more rent. The Landlords stated that they are aware of the penalties associated with not moving in, and are well aware that it is not worth their while to lie about moving in. The Landlords stated that this eviction has nothing to do with wanting to re-rent the rental unit at a higher rent, despite what the Tenants believe.

The Tenants stated that they have seen other upper units in the rental complex get 2 Month Notices (to have one of the Landlords' family members move in). However, the Tenants stated that there appears to be renovations going on in those units too, which calls into question the validity and intent of the Notice issued in this case. The Tenant suggested that perhaps the Landlord is looking to renovate, raise the rent, and not move in. The Tenants provided photos showing that the Landlord is renovating some of the other units. The Tenants also stated that if the Landlords issued the Notice because they wanted to move in themselves, then they shouldn't start a bunch of renovations.

The Tenants also stated that they had discussions with the property manager about being able to stay if they paid more rent. However, the Landlords stated that this was taken out of context

because the property manager was trying to mitigate the impact on the Tenants (having to vacate) and that the property manager didn't actually have the authority to talk about those matters. Further, the Landlords stated that when they conversed with the Tenants on this matter, that it was made clear that they were moving in, and it was not about trying to extract more rent from the rental unit.

Analysis

In the matter before me, once the Tenants allege bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as indicated on his Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been a degradation in the relationship between the Landlords and the Tenants. The Tenants' are alleging that the Landlords have issued this Notice in bad faith. However, in response to the Tenants' allegations of bad faith, and to explain why the Notice was issued, the Landlords expressed that they were renting another rental unit, and it did not make economic sense to continue to do so, especially since they are expecting a child within 3 months. The Landlord stated that they have already vacated the apartment they were renting (and provided evidence to show they gave their previous Landlord notice that they would be moving out). The Landlords have stated that they are planning on renovating the rental unit prior to moving in and that they should be allowed to do this as owners, since this unit is a better fit for them than the place they were previously living in. The Landlords stated that this rental unit is an upper unit, and they do not want to live in the basement unit.

I note that the upper floor units (a couple of which have received 2 Month Notices for different family members to move into) are more desirable than the currently vacant lower units. I also note that those other units are not the subject of this hearing, except to examine the potential good faith intentions of the Landlord, as there were other similar Notices issued for those units. In this case, I have considered that those rental units have been vacated based on a similar 2-Month Notice, and that they are currently being renovated so that the Landlord and/or a different close family member can move in. The Landlord stated that there are other family members moving into those units and that there are several family members who own this rental complex. I note that the other upper units only recently received similar Notices, and those tenancies have only freshly ended a couple weeks ago. I do not find the issues with the other rental units support the Tenants' allegations of bad faith with respect to this Notice, and I do not find it is unreasonable for the Landlord to renovate and freshen up the other rental units before they, or a close family member moves in, provided they do so within a reasonable period of time.

I find it important to note that Section 51(2) of the Act requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only)

I note that the Landlord is aware of the implications and penalties if they do adhere to the Notice and perform the stated purpose within a reasonable period of time. I also note that any compensation for the Tenants if the Landlord does not accomplish the stated purpose would be premature at this point, as the tenancy has not yet ended, and the Landlord has not yet been given an opportunity to move in.

In this hearing, I am examining whether or not the Landlord has sufficiently demonstrated the basis for the Notice, and has sufficient grounds and evidence to end the tenancy for the reasons indicated on the Notice.

Ultimately, after looking at the totality of the situation before me, I find the Landlords' explanation regarding their intentions and use of the subject property is reasonable and I find the Tenants' allegations of bad faith are not sufficiently demonstrated, such that I would find that Landlord did not intend to occupy the rental property as they have indicated on the Notice.

In this case, I find the Landlords have sufficiently demonstrated that they have every intention of moving in, as they are expecting a new child soon, and would like to occupy this unit for themselves. Based on the evidence before me, I find it more likely than not that the Landlords intend in good faith to occupy the rental unit in question.

I find the Landlords have sufficiently supported the reasons to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenants' application to cancel the Notice, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective October 31, 2018, at 1pm, after service on the Tenants. If the Tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 05, 2018

Residential Tenancy Branch