



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenants to cancel a 2 Month Notices to End Tenancy for Landlord’s Use of Property dated July 30, (“2 Month Notice”), for an order directing the landlords to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant CB (“tenant”) and landlord BH (“landlord”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

The landlord confirmed that they received the tenants’ documentary evidence and that the landlords did not serve any documentary evidence in response to the tenants’ application. I find the landlords were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Should the landlords be ordered to comply with the Act, regulation or tenancy agreement?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one year fixed-term tenancy began on June 1, 2012 and reverted to a month to month tenancy after June 1, 2013. The parties agree that monthly rent was \$1,700.00 originally and is currently \$2,150.00 per month and is due on the first day of each month.

The parties agreed that the landlord served the 2 Month Notice on the tenants on July 30, 2018. The tenants disputed the 2 Month Notice on August 14, 2018. The reason listed on 2 Month Notice states "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 tenants are disputing that the 2 Month Notice was issued in good faith as tenant provided documentary evidence to support that the 2 Month Notice was served shortly after the tenants received a text from the landlord regarding rent being below fair market value.

The landlord confirmed that he sent the text reviewed during the hearing which the tenant stated was sent shortly before receiving the 2 Month Notice. In the text indicated as being sent at 11:16 p.m. the landlord writes in part:

“...We both realize that you are well under a fair market rent for a long time now. You recently had an opportunity to bring it to a fair level which you did not do.

...

We both know where the current fair market rent is on the condo and I ask that you reconsider the situation. I have not discussed this with [name of co-landlord] so please contact her with a fair adjustment. I want it to look like this was your idea. I currently have a sister living in Langley taking cancer treatments at Vancouver General for Non Hodgkin's Lymphoma who would appreciate the condo rent free for a year...”

[Reproduced as written except for anonymizing name of co-landlord]

When the agent was asked why he served the 2 Month Notice on the landlord the landlord stated that he was turning 70 in a couple months and that his wife is 68 with 2 hip replacements and that when he was looking at comparable rents in the Richmond a unit that was 859 square feet (“SF”) was renting for \$2,500.00 per month and another

unit at 871SF was renting for \$2,700.00 and that the rental unit is about 1,000SF and is renting for only \$2,150.00. The landlord then that the text to the tenants was “ill-conceived” and that the landlords intend to make renovations to the rental unit to ensure that his wife, who uses a walker, can access the shower etc. The landlord confirmed that he did not submit any renovation plans in evidence and admitted that if the tenants agreed to pay fair market rent then they could stay in the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

When tenants dispute a 2 Month Notice, the onus of proof reverts to the landlords to prove that the 2 Month Notice is valid and should be upheld. If the landlord fail to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when tenants have filed to cancel a 2 Month Notice and calls into question the “good faith” requirement, the onus lies on the landlords to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

I find that by issuing a 2 Month Notice so closely to the time when the landlords were asking the tenants to consider their request for fair market rent and agreeing during the hearing that they would allow the tenants to stay if the tenants paid fair market rent, that the landlords have failed to prove that the 2 Month Notice was issued in good faith. Therefore, **I cancel** the 2 Month Notice dated July 30, as I find there is insufficient evidence that the 2 Month Notice was served in good faith.

I order the tenancy to continue until ended in accordance with the *Act*. The 2 Month Notice dated July 30, 2018 is of no force or effect.

I grant the tenants a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. As a result, the tenants are authorized to deduct \$100.00 from a future month’s rent on a one-time basis as the recovery of the cost of the filing fee.

I caution the landlords to ensure that any further 2 Month Notice are served in good faith. Should the landlords continue to serve 2 Month Notices that are not served in

good faith the landlords could be recommended for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under the *Act* is up to \$5,000.00 per day.

Conclusion

The 2 Month Notice dated July 30, 2018 is cancelled due to insufficient evidence that it was issued in good faith. The 2 Month Notice is of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

The tenants have been granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 4, 2018

Residential Tenancy Branch