



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

The tenants have applied for an order cancelling a 2 month notice to end tenancy issued for landlord's use of property, an order for the landlord to comply with the Act, regulations or tenancy agreement, an order to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee (recovery of repair costs). The tenant stated that the request for an order to comply is for the landlord to provide emergency contact information, the reduction in rent request is for recovery of

repair costs for a toilet, loss of use regarding the washer and a loss of quiet enjoyment in regards to responding to multiple eviction attempts.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenants have applied for an order cancelling a 2 month notice to end tenancy issued for landlord’s use of property, an order for the landlord to comply with the Act, regulations or tenancy agreement, an order to reduce rent for recovery of repair costs and recovery of the filing fee. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy, I dismiss these sections of the tenants’ claim with leave to reapply. The hearing shall proceed only on the primary issue of the notice to end tenancy and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice to end tenancy?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

This tenancy began on June 1, 2010 on a fixed term tenancy ending on May 31, 2011 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy dated June 9, 2010. The monthly rent began as \$1,150.00 payable on the 1st day of each month. A security deposit of \$575.00 was paid on June 1, 2010.

The tenants seek an order to cancel a 2 month notice to end tenancy issued for landlord’s use of property (the notice) dated November 19, 2018. The notice sets out an effective end of tenancy date of February 1, 2019 and that the reason it was being given was for:

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 argued that the landlords have a history of not providing accurate information and have issued the notice to end tenancy in “bad faith”.

The tenants cite an example that prior to receiving the notice to end tenancy, the landlord attempted to raise the rent to an amount not allowed under the Act, which was refused by the tenants. Upon being notified of this by the tenants, the landlords issued the notice to end tenancy 4 days later. The tenants also stated that a prior notice to end tenancy was issued by the landlord for landlord’s use and was set aside in a previous dispute resolution hearing. In that hearing, it was confirmed that the landlords were served, but did not attend or submit any evidence in support of that notice to end tenancy.

The landlords argued that their intent is to move into the rental space due to issues in their current living space. The landlords reiterated that it is their intent to occupy the space. The landlords confirmed that due to unforeseen personal issues, the landlords were mistaken in their interpretation of the notice to end tenancies.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord’s use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence of both parties that the landlords served the tenants with the 2 month notice to end tenancy for landlord’s use. Neither party raised any issues with the content of the notice itself or of service.

Residential Tenancy Branch Policy Guideline #2, Ending a Tenancy: Landlord’s Use of Property, state in part, 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... the BC Supreme Court found that 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 tenancy. When the issue of an ulterior motive or purpose for

an eviction notice is raised the onus is on the landlord to establish that they are acting in good faith.

I find in the circumstances that the landlords have failed to provide sufficient evidence to satisfy me on a balance of probabilities that they intend in good faith to occupy the rental space. The tenants have provided undisputed evidence of the landlords' prior attempts at unsuccessfully ending the tenancy for various unrelated issues. The landlord has provided only their direct testimony of their intent which I found insufficient. As such, the tenants' application is granted. The notice to end tenancy dated November 19, 2018 is set aside and the tenancy shall continue.

As the tenants have been successful and the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent due upon receipt of this decision.

Conclusion

The notice to end tenancy dated November 19, 2018 is cancelled.

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: January 17, 2019

Residential Tenancy Branch