



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, 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;
- 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 the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Registered Mail on January 16, 2019. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on February 14, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the end of the hearing all parties confirmed that the mailing address used by the tenants was incorrectly entered as 9229 and should be 9339 as per the dispute address. As such, the Residential Tenancy Branch File shall be corrected.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?
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 May 1, 2015 on a fixed term tenancy of 36 months until April 30, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 23, 2015. The monthly rent was \$1,810.00 payable on the 1st day of each month. A security deposit of \$905.00 was paid on April 23, 2015.

Both parties confirmed the landlord served the tenants with a 2 month notice to end tenancy for landlord's use of property (the 2 month notice) dated January 10, 2019 via Canada Post Registered Mail on January 16, 2019. The 2 month notice sets out an effective end of tenancy date of March 31, 2019 and the reason selected as:

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 stated that the owner wishes to take back the unit from the tenants for his daughter's family of 4 which includes 2 children ages 7 and 4 to occupy. The landlord stated that they currently reside in the landlord's basement in a small space which is inadequate to their needs.

The tenants claim that the landlord's 2 month notice was issued in bad faith and clarified that this is another dispute of a notice to end tenancy as the landlord has unsuccessfully tried to evict them in the past. The tenants stated that the landlord in 2018 tried to unsuccessfully increase the rent above the allowed 4%. The tenants have referred to email exchanges in which the tenants stated the landlord "threatened" them to agree to the rent increase or that they would be evicted.

The landlord argued that no threats have been made to the tenants. The landlord stated that at the end of the fixed term in April 2018, the landlord wished to increase the rent, but was informed by the tenants that this was not allowed. The landlord stated that the RTB was consulted where he was informed of the 4% allowed limit for 2018. As a result the landlord cancelled the requested increase and issued a notice of rent increase for the allowed 4%.

The tenants argued that this is another attempt by the landlord to end the tenancy to re-rent the unit at a higher rate. The tenants have claimed that the landlord will not occupy the rental unit in good faith and has referred to two previous Residential Tenancy Branch Decisions in which the tenants claim that the landlord had threatened the tenants with eviction if they did not accept a substantial rent increase. During the hearing the tenants referred to multiple documents (emails and previous decisions), but a review of this evidence showed that these were all emails by the tenants to the landlord and arguments made by the tenants in the hearings. The tenants were unable to provide any conclusive evidence of a threat of eviction unless the tenants accepted a rent increase.

Analysis

Section 49 (3) of the Act states in part that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member intends in good faith to occupy the rental unit.

Both parties confirmed that the landlord served the tenants with the 2 month notice dated January 10, 2019. Both parties confirmed the contents of the 2 month notice and the reason selected. As such, I find that the tenants were properly served with the 2 month notice dated January 10, 2019.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, the tenants have claimed that the landlord will not in good faith occupy the rental unit. The tenants have claimed through the submission of previous notice(s) to end tenancy and the decisions of those hearings that the landlord continues to try to end the tenancies in bad faith. The tenants claim is that the landlord will re-rent the unit at a higher rent and not have his daughter and her family occupy the space. The landlord has disputed this claim stating that when the original fixed term tenancy agreement ended, the landlord tried to enter into a new tenancy agreement at a higher rent (based upon market value) as provided in both the landlord and tenants evidence submissions. The landlord stated that this was originally refused by the tenants and the landlord sought information from the Residential Tenancy Branch, which was confirmed. The landlord was informed that only a 4% increase was allowed. The landlord stated that the offer of the over 4% rent increase in the new tenancy agreement was cancelled and a notice of rent increase was issued. Both parties confirmed the notice of rent increase for 4%. The landlord claims that the tenants have repeatedly used this

argument to stop the landlord from using the rental space for his daughter and her family. The landlord has submitted a copy of a signed and dated letter confirming the daughter's intent to occupy the rental space.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the landlord has provided sufficient evidence of good faith that his daughter will occupy the rental space. The landlord provided reasonable and concise details of his intent to have his daughter and her family occupy the rental space. The landlord also provided a reasonable and concise explanation of the original request to increase the rent before being corrected. The tenants have in contrast provided a fragmented argument that the landlord will in bad faith not have his daughter occupy the rental space. The tenants relied upon the argument that the landlord had threatened to evict them if they did not comply with a "demanded" rent increase. The tenants were unable to provide sufficient evidence of this "threat". The landlord's 2 month notice is upheld. The tenants' application is dismissed. Pursuant to section 55 of the Act, the landlord is granted an order of possession with the original effective end of tenancy date of March 31, 2019.

Conclusion

The tenants' application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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: February 26, 2019

Residential Tenancy Branch