



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL

Tenant: CNL LAT LRE OLC PSF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 7, 2019.

The Landlord and the Tenants both attended the hearing. All parties provided testimony and 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 and Notice of Hearing packages.

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

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to

reapply, all of the grounds on the Tenants' application with the exception of the following ground:

- to cancel a 2-Month Notice to End Tenancy for Landlord's use of the property (the "Notice").

Further, since the issues that the Landlord has cross-applied for all relate to the Notice and the end of the tenancy, they will be considered in this hearing.

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 Tenant acknowledged receiving the Notice on February 28, 2019. The effective date of the Notice is April 30, 2019. The Landlord issued the Notice for the following reason:

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).

In the hearing, the Landlord's husband, M.A., did most of the speaking, as the Landlord had a stroke in February 2019. M.A. stated that they live in another rental unit on the top floor in the apartment building. M.A. stated that there is no elevator, and the only way to get to any of the apartments in the building is by walking up stairs. M.A. stated that on February 3, 2019, the Landlord had a stroke and was hospitalized for a significant period of time. The Landlord provided medical documentation showing she had a stroke (letter from the hospital), and that she should procure a living environment where she doesn't have to walk up as many stairs, due to her elevated fall risk, and limited mobility since the stroke. M.A. stated that the Landlord has to walk with a cane, and has difficulty speaking since the stroke, and she wants to move into the Tenants' unit because it is the unit with the least amount of stairs. The Landlord has accused the Tenants of stalking and harassing them.

The Tenants deny that they have stalked or accosted the Landlord. The Tenants repeatedly expressed that they are going to sue the Landlord in the Supreme Court for defamation. The Tenants stated that they do not take the stroke seriously because the Landlord is still mobile, and can still walk up stairs. The Tenants feel the Landlord has issued this Notice in bad faith. The Tenants referred me to photos they took showing the Landlord walking with a cane. The Tenants stated that even if the Landlord moved into their unit, she would still have to walk up a full flight of stairs.

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 she intends in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

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

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenants. However, in response to the Tenants' allegations of bad faith, and to explain why the Notice was issued, M.A. expressed that his wife (the Landlord) had a serious stroke which impacted her mobility (on February 3, 2019). As such, she wants to reduce the amount of stairs she has to walk to get into her living space. Since the Tenants live lower in the building, the Landlord is looking to move in there to make life easier, given her reduced mobility. I note the Landlord has provided a letter from the hospital stating that she had a stroke, and that she is at an increased risk of falling, since her stroke in February 2019.

Ultimately, after looking at the totality of the situation before me, I find the Landlord's explanation regarding her intentions and use of the subject property is reasonable and I find the evidence indicates the Notice was issued in good faith. I find the Landlord has provided sufficient evidence to substantiate the Notice, and I dismiss the Tenants' application to cancel the Notice. 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 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession. I note the effective date of the Notice has already passed, and the Landlord has expressed that her medical condition is such that she cannot wait long for possession of the rental unit. I issue the Landlord an order of possession, effective 2 days after it is served on the Tenants.

Since the Landlord was successful with her application, I award her the recovery of the filing fee she paid for this application, pursuant to section 72 of the Act. I authorize the Landlord to retain the \$100.00 from the security deposit they currently hold. As the Landlords hold \$950.00, I find the remaining balance of the security deposit is now \$850.00.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served 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: May 8, 2019

Residential Tenancy Branch