



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, RP, RR, OLC, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement; for an Order requiring the Landlord to make repairs; and for authority to reduce the rent.

The Tenant stated that the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch on October 14, 2019 were sent to the Landlord, via registered mail, although she cannot recall the date of service. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceeding.

On November 29, 2019 the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on November 29, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Is there a need to issue an Order requiring the Landlord to make repairs?
Are the Tenants entitled to a rent reduction?

Background and Evidence

The Tenant stated that this tenancy began on October 01, 2013. The Agent for the Landlord stated that he does not know when the tenancy began.

The Agent for the Landlord and the Tenant agree that:

- rent is due by the first day of each month;
- a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 27, 2019, was placed in the Tenants' mail box in September of 2019;
- the Notice to End Tenancy declared that the Tenants must vacate the rental unit by November 30, 2019;
- the reason for ending the tenancy cited on the Notice to End Tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse;
- the residential complex is a four-plex;
- the Tenants occupy the upper portion of one side of the unit;
- the upper portion of the other side of the unit is very similar to the Tenants' rental unit;
- the upper portion of the other side of the unit was rented to new occupants on September 01, 2019;
- the occupants of the upper portion of the other side of the unit vacated the rental unit on September 28, 2019
- the upper portion of the other side of the unit is still vacant; and
- a suite in the lower portion of the rental unit was vacate from August 01, 2019 to November 31, 2019.

The Agent for the Landlord stated that:

- the Notice to End Tenancy was served because the Landlord's mother intends to move into the rental unit;
- the Landlord's mother wishes to live in this residential complex because it is close to the hospital that she attends two or three times per week for medical reasons;
- the upper portion of the other side of the rental unit, which is currently vacant, is not suitable for the Landlord's mother because, in part, it has a lingering smell of smoke;

- the lingering smell of smoke remains in the unit, even though the unit has been fully painted;
- the upper portion of the other side of the rental unit is not suitable for the Landlord's mother because, in part, it has a foul odor coming from the venting system;
- the upper portion of the other side of the rental unit is not suitable for the Landlord's mother because the odors may impact her existing medical condition;
- the Landlord was not aware of the odors in the rental unit until September 15, 2019;
- the Landlord is having difficulty re-renting the upper portion of the other side of the rental unit, due to the odors;
- a suite in the lower portion of the rental unit is not suitable for the Landlord's mother, as it is too small; and
- although the number of times the Landlord has attempted to end the tenancy may appear as if the tenancy is being ended in bad faith, the true reason for ending the tenancy is that the mother needs to be closer to the hospital.

The Tenants submit that the Landlord is not ending the tenancy in good faith. They submit that the Landlord is attempting to end the tenancy, in part, to avoid the responsibility of repairing the rental unit and, in part, so the Landlord can increase the rent. They submit that the Landlord's mother could move into the upper portion of the other side of the rental unit, which is currently vacant.

In support of the good faith argument, the Tenants submitted decisions from five previous dispute resolution proceedings, the numbers of which appear on the first page of this decision.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a hearing on September 10, 2019, as a result of an Application for Dispute Resolution filed by the Tenants. They agree that the Arbitrator adjudicating that hearing cancelled a One Month Notice to End Tenancy for Cause that had been served by the Landlord. They agree that the Arbitrator also ordered the Landlord to make a variety of repairs, including dealing with a rodent infestation, inspecting/repairing the roof, servicing the furnace, cleaning/repairing gutters, cleaning ducting, and cleaning the chimney if it was determined the chimney was usable.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a hearing on February 14, 2019, as a result of an Application for Dispute Resolution filed by the Tenants. They agree that at this hearing the Landlord declared that he was unable to proceed with planned renovations to the rental unit and that he wished to

withdraw the Four Month Notice to End Tenancy for Demolition, Repair, Renovation, or Conversion that had been served to the Tenants. As the Landlord wished to withdraw the Four Month Notice to End Tenancy, the Tenants withdrew their Application for Dispute Resolution.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a hearing on July 03, 2018, as a result of an Application for Dispute Resolution filed by the Tenants, in which they applied, in part, to cancel a One Month Notice to End Tenancy for Cause. The parties agree that at this hearing the parties reached a settlement agreement which included an agreement to continue with the tenancy. The parties also agreed that the Landlord would make several repairs, including dealing with a rodent infestation, inspecting/repairing the roof, servicing the furnace, and cleaning/repairing gutters. The parties also agreed that the Tenants could have the ducts and vents cleaned, at the expense of the Landlord. The parties also agreed that the Tenants could have the chimney cleaned, at the expense of the Landlord, if it was determined the chimney was usable.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a hearing on November 02, 2017, as a result of an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a One Month Notice to End Tenancy for Cause. The parties agree that at this hearing the parties reached a settlement agreement which included an agreement to continue with the tenancy and that the Tenants would pay an additional pet damage deposit.

The Agent for the Landlord and the Tenant agree that this tenancy was the subject of a hearing on September 06, 2017, as a result of an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an additional rent increase. The parties agree that the application for an additional rent increase was dismissed.

The Agent for the Landlord stated that the Landlord has not yet repaired the roof on the rental unit. He stated that the Landlord has obtained an estimate for the repair, in the amount of \$40,000.00, which he is budgeting for.

The Agent for the Landlord stated that the Landlord has hired a pest control company and has provided them with contact information for the Tenants. The Tenant stated that she has noticed traps outside the residential complex, but the pest control company has made no efforts to contact her.

The Agent for the Landlord and the Tenant agree that the duct cleaning has been completed.

The Agent for the Landlord stated that the furnace as been inspected and repaired. The Tenant stated that when the furnace was inspected she was told there was a leak in the furnace. She stated that she was told by a different service person that the furnace was functioning properly. She stated that she has not been provided with any documentary evidence that shows the furnace is functioning properly.

The Agent for the Landlord stated that the gutters have been cleaned and that they do not require any repairs. The Tenant agrees that the gutters have been cleaned, but she believes they also need repairs.

The Agent for the Landlord stated that the Landlord's insurance prohibits the use of the fireplace and that the chimney has not, therefore, been cleaned. The Tenant stated that they have not been provided with anything in writing that establishes the fireplace cannot be used.

The Tenants have applied for an Order requiring the Landlord to repair the roof and deal with a rodent infestation.

The Tenants have applied for a rent reduction of \$500.00 because the roof has not been repaired and the rodent infestation has not been addressed.

In the Residential Tenancy Branch decision, dated September 10, 2019, the Arbitrator granted the Tenants a rent reduction of \$100.00 if a rodent treatment plan is not in place by October 01, 2019. The Arbitrator also granted the Tenants the authority to reduce each subsequent rent payment by \$100.00, until such time as the rodent treatment plan is in place.

In the Residential Tenancy Branch decision, dated September 10, 2019, the Arbitrator also granted the Tenants a rent reduction of \$100.00 if a second professional roofing inspection is not completed by October 01, 2019, a copy of the report is not provided to the Tenants within two days of receiving it from the roofing company, and the recommended repairs to the roof have not commenced by December 01, 2019. The Arbitrator also granted the Tenants the authority to reduce each subsequent rent payment by \$100.00, until such time as all three of these requirements have been met.

Analysis

Section 49(35) of the *Act* authorizes a landlord to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. When a landlord intends to end a tenancy pursuant to this section, the landlord bears the burden of proving that the tenancy is ending in good faith.

Residential Tenancy Branch Policy Guideline 2A reads, in part:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I find that the Landlord has submitted insufficient evidence to establish that this Two Month Notice to End Tenancy was served in good faith.

In adjudicating this matter, I was influenced, in part, by the absence of evidence, such as testimony from the Landlord's mother, that corroborates the Landlord's submission that she intends to move out of her existing home into this rental unit. Even if I accepted

that the mother intended to move into the rental unit, I would not be satisfied that the Landlord was ending the tenancy in good faith.

In adjudicating this matter, I was influenced, in part, by the undisputed evidence that the Landlord has attempted to end the tenancy on four previous occasions for various reasons, none of which have been successful. I find that the Landlord's repeated attempts to end the tenancy strongly suggest that the Landlord simply wants the tenancy to end, which suggests there may be an ulterior motive for serving this most recent Notice to End Tenancy.

In adjudicating this matter, I was influenced, in part, by the fact that this Two Month Notice to End Tenancy was signed seventeen days after the hearing on September 10, 2019, in which the Landlord's One Month Notice to End Tenancy was set aside. I find that this strongly suggests that the most recent Notice to End Tenancy was served because the Landlord was unable to end the tenancy for cause, rather than the Landlord's mother's good faith intent to occupy the unit.

In adjudicating this matter, I was influenced, in part, by the undisputed evidence that some of the repairs the Landlord agreed to make during the hearing on July 03, 2018 and was Ordered to make by an Arbitrator on September 10, 2019 have not been completed. I find that this suggests that the most recent Notice to End Tenancy may have been served in an attempt to avoid the various repairs the Landlord is legally required to complete.

In adjudicating this matter, I was influenced, in part, by the undisputed evidence that the Landlord's application for an additional rent increase, which the Landlord applied for in 2016, was dismissed. I find that this application establishes that the Landlord believes the rent for the unit is too low and lends some credibility to the Tenants' submission that the Landlord is attempting to end the tenancy because the Landlord wishes to generate more income.

As the Landlord has submitted insufficient evidence to establish that this Two Month Notice to End Tenancy was served in good faith, I grant the Tenants' application to cancel this Notice.

As the Landlord was ordered to inspect/repair the roof and deal with a rodent infestation by a Residential Tenancy Branch Arbitrator on September 10, 2019, I find that I am unable to consider that matter. That matter has been previously adjudicated and cannot, therefore, be reconsidered at these proceedings.

As the Tenants were awarded a rent reduction by a Residential Tenancy Branch Arbitrator on September 10, 2019, I find that I am unable to consider that matter. That matter has been previously adjudicated and cannot, therefore, be reconsidered at these proceedings.

I find that the Tenants' application has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy, dated September 27, 2019, is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have established a monetary claim, in the amount of \$100.00, in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Tenants to reduce one monthly rent payment, in full satisfaction of this monetary claim.

The Landlord is hereby cautioned that any further attempts to end this tenancy COULD be construed as a breach of the Landlord's right to the quiet enjoyment of the rental unit, which COULD result in the Landlord being liable to pay compensation to the Tenant.

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: December 20, 2019

Residential Tenancy Branch