



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NUEVO MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNL RP FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord make repairs to the rental unit or property; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an agent to assist and with a co-tenant, who is the tenant's partner. An agent for the landlord company also attended the hearing and introduced 2 witnesses. The witnesses were asked to leave the call until time to testify.

The tenant and the co-tenant each gave affirmed testimony. The landlord's agent and 1 of the witnesses also gave affirmed testimony, however when the other witness of the landlord was called, the witness did not re-attend.

The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute the notice to end the tenancy?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, and in good faith?

- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began over 10 years ago and prior to the purchase of the property in 2010. The landlord's agent is the sole owner of the landlord company. The tenant still resides in the rental unit. There is no written tenancy agreement, however rent somewhere in the neighbourhood of \$900.00 per month is payable on the last day of each month and there are no rental arrears. The landlord's agent believes that the prior landlord collected a security deposit from the tenant in the amount of \$375.00, which is held in trust by the current landlord. The rental unit is an apartment in a building containing 23 suites, and the landlord does not reside on the property.

The landlord's agent further testified that on November 4, 2019 he and the caretaker served a Two Month Notice to End Tenancy for Landlord's Use of Property to the tenant in person. A copy has been provided for this hearing and it is dated November 4, 2019 and contains an effective date of vacancy of January 31, 2020. The reason for issuing it 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 landlord's agent has been taking care of property management, and will be handing over management to his son and requires the rental unit to reside in. The landlord's son does not currently live on the property, and will be taking over on February 1, 2020. The landlord's current caretaker won't be working for the landlord effective February 1, 2020 and does not live on the property.

This particular rental unit is situated above the boiler room, which needs to be attended to daily, and the laundry room which needs to be opened daily. It is also close to the garbage bin which needs to be monitored and it overlooks the parking lot in the back. Currently, there are no vacancies in the complex and this is 1 of 5 single bedroom units. Photographs of the rental building have been provided as evidence for this hearing, which the landlord's agent testified were taken about 2 weeks ago showing the proximity of the rental unit to other amenities.

With respect to the tenant's application for an order that the landlord make repairs to the rental unit or property, the landlord's agent testified that the rental unit has not been painted since this tenancy began; the landlord does not paint units if they are occupied.

The landlord's agent also testified that there is no leak; it's been inspected on several occasions by the landlord's agent and by the current caretaker. Upon inspection, there was soap running down with water, which the landlord believes was caused by the tenants. The roof is 3 years old, and the tenant above this rental unit has not had any leaks or overflows. A broken water line would cause the water leak to be on-going and wouldn't have soap with bubbles in it. The landlord has provided a letter from the tenant above this rental unit, which is dated December 17, 2019 and was written at the request of the landlord which confirms that. The landlord did not receive any complaints in 2016 from the tenant about leaks, but received a letter from the tenant on November 17, 2019 which is dated November 7, 2019, and the notice to end the tenancy was hand-delivered prior to that.

The landlord does not recall when he was in the rental unit recently, but testified that he installed a new stove a few months ago with the help of the caretaker. The tenants told the caretaker that the stove was not working and the landlord replaced it.

With respect to the tenant's evidence, the landlord testified that he has viewed the videos and he did not instruct the caretaker to collect late rent fees, but believes he can charge late fees. The video also shows a man, who the landlord identified as the caretaker, open his wallet and give money to the tenant for a sandwich; he has a disability.

The landlord's witness is the landlord's son and testified that he will be assuming the management position effective February 1, 2020. He has been working full-time for the landlord for the last 3 years and part-time prior to that. His duties will be collecting rent, preparing leases, showing suites, snow removal, attending to the boiler room, watching the garbage bins and parking lot, as well as closing and opening the laundry room daily. This rental unit is located overlooking the parking lot and the area where the garbage bins are located.

The first tenant (FA) testified that she moved into the rental unit in 2000 and her partner moved into the unit in 2010.

The witness also testified that she did not pour water into the ceiling on purpose, it has always leaked from the 3rd floor, from 2015 until now. The tenant had made the requests about the water leaks many times. It leaks in the ceiling of the bedroom, lobby, bathroom and living room.

On August 7, 2019 the tenant formalized a request for repairs to the stove and water damage and delivered it to the landlord's caretaker. The first time, he said that he didn't receive it, so the tenant gave it to him again on August 8 or 9, 2019. He took the letter,

but then didn't accept the hearing package for this hearing, so the tenant sent it to the landlord by registered mail.

Another letter was provided to the landlord, and a copy has been provided for this hearing. It is dated November 7, 2019 and was delivered by hand again to the caretaker. It requests urgent repair of water leaking through the ceiling from the upstairs suite, and states that the video taken about 1 month prior shows dirty soapy water dripping down the wall to the carpet. It also states that a previous request for repair was made on August 7 and: "...Mould in bathroom ceiling - insulation started falling out in 2016 following a water leak in 2016, the landlord fixed the leak however declined to fix the hole even though insulation and other material continuously fallen out on the floor., and I have photos showing black mould growing around the insulation. This is a serious health hazard. Because this was not fixed, my husband ... has put drywall over the hole as a temporary fix. This needs to be fixed properly as soon as possible."

The tenant has also provided a video dated August 1, 2019 showing a man demanding \$100.00 cash for late fees. That man was the landlord's caretaker and he told the tenant that he would not take a cheque, only cash, or the tenant would get a notice to end the tenancy and would have to move out. The man says it's for his boss or the tenant will get kicked out, but will have to go buy a receipt book later. He appears to be texting someone and tells the tenant she will receive a notice that evening.

The second video provided by the tenant shows water stains and cracks on the ceiling and walls.

The third video provided by the tenant shows an opening cut into the gyprock in the ceiling and partially replaced, but not entirely. It also shows water steadily dripping into a bucket and on the rugs in the bathroom.

The tenant has been residing in the rental unit for 20 years. The caretaker has also ordered that rent be paid in cash; however the tenant has not paid any late fees.

The second tenant (HA) testified that the landlord's caretaker, not the landlord helped to move the new stove into the rental unit. The landlord was not there, and the caretaker said that because he was alone, he needed help, so the tenant helped.

Submissions of the landlord's agent: the rental unit is required for the landlord's son who will be assuming the management duties of the rental complex.

It would be ludicrous that the landlord wouldn't maintain the building.

It doesn't matter what date the Two Month Notice to End Tenancy for Landlord's Use of Property was served, the effective date of vacancy does not change.

Submissions of the tenant's agent: the landlord is acting in bad faith and the reason for ending the tenancy does not make sense that this should be the suite for his son to occupy; it could easily be a suite on the ground floor without stairs to the boiler and laundry room, or suite on 3rd floor.

The landlord has not established that the rental unit will be occupied by his son, and credibility is in question given that the notice to end the tenancy was issued after the landlord received repeated requests for repairs. The tenant's agent also submits that the tenant received the notice to end the tenancy under the door on November 20, 2019, but it is dated November 4, 2019.

The video shows water coming from the ceiling, and the landlord has a duty to make repairs on an urgent basis.

Analysis

Firstly, the tenant has applied for more time than prescribed to dispute a notice to end the tenancy given by the landlord. The *Residential Tenancy Act* specifies time limits for filing a dispute, however in this case the parties disagree as to how and when the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) was served. The landlord testified that it was served in person with the caretaker present on November 4, 2019. The tenant testified that it was found under the door on November 20, 2019. The landlord's caretaker didn't remain in attendance, and there is no Proof of Service document filed by the landlord. Therefore, I accept the testimony of the tenant, and I find that it was served on November 20, 2019 by placing it in a conspicuous place and is deemed to have been served 3 days later. The tenant filed the application for Dispute Resolution on November 22, 2019, and I am satisfied that the tenant has filed the dispute within 15 days as required by the *Act*.

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice.

I have reviewed all of the evidence provided by the parties, including the videos. Although a landlord is not permitted to charge a late fee unless such a fee is specified in

a tenancy agreement, and cannot be more than \$25.00, the parties agree that the tenant has never paid a late fee.

The issue is whether or not the landlord has established good faith intent for his son to occupy the rental unit, or issued it in bad faith as a result of the tenant's request for repairs.

The letter dated November 7, 2019 is made with the assistance of the tenant's Advocate and requests urgent repair of water leaking through the ceiling from the upstairs suite. It also states that a previous request for repair was made on August 7. The landlord testified that he believes the tenant poured water on the ceiling, which makes no sense to me at all. The video clearly shows that a hole was cut in the ceiling gyprock and has not fully been re-covered, puttied or painted, and water continuously running out of the hole. There is no possible way, in my opinion, that the tenant could be responsible for such leaks from above.

The landlord also testified that he does not paint rental units while they are occupied. This tenancy has lasted 20 years and I find it contrary to the law that requires a landlord to maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant.

The landlord also submits that the Notice was given prior to receiving the tenant's November 7, 2019 request for repairs. The tenant's letter was made with the assistance of an Advocate, and the tenant testified that it was hand-delivered to the landlord's caretaker on November 19, 2019. Having found that the Notice was found under the door on November 20, 2019, and considering the landlord's testimony that the letter was received on November 17, 2019, I am not satisfied that the landlord has established which happened first.

The landlord also testified that he replaced the stove in the rental unit recently with the assistance of the caretaker. However, that is disputed by the second tenant who testified that the landlord did not attend, and the caretaker attended on his own with no help so the tenant had to help.

The landlord has installed a new roof on the building, which is an expensive repair, and testified that it would be ludicrous that he wouldn't maintain the building. I agree.

The landlord's son testified that he has been working full-time for 3 years and will be taking over management. Since he has been doing so while residing in another location I question whether or not he will be moving in.

There is no written tenancy agreement, however the landlord noted on the notice to end the tenancy is a landlord company. The reason for issuing it states that the rental unit will be occupied by the landlord or close family member, parent or child or parent or child of that individual's spouse. Companies are not individuals and do not have spouses, parents or children.

There are too many inconsistencies. Considering the attempt of the landlord's caretaker to obtain cash from the tenant contrary to the law on pain of eviction, apparently at the direction of the landlord's agent, and given the lack of repairs and attention the landlord has paid to the rental unit, and other inconsistencies, I am not satisfied that the landlord has established good faith intent, and I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, and the tenancy continues.

I also order the landlord to make repairs necessary to stop the leaks in the ceilings and that the repair be completed by January 31, 2020. I also order the landlord to repair the gyprock in the bathroom ceiling and repaint the rental unit by February 29, 2020.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing a copy of the order in the Provincial Court of British Columbia (Small Claims Division) for enforcement.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 4, 2019 is hereby cancelled and the tenancy continues.

I also order the landlord to make repairs necessary to stop the leaks in the ceilings and that the repair be completed by February 15, 2020.

I also order the landlord to repair the gyprock in the bathroom ceiling and repaint the rental unit by March 31, 2020.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 23, 2020

Residential Tenancy Branch