Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT

Introduction

On November 15, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant M.B. attended the hearing. Landlord J.B. attended the hearing with D.L. attending as an agent for the Landlords. The other Landlord dialled into the teleconference call but exited the call within minutes of the hearing commencing. This was confirmed to be Landlord J.B.'s wife as her name was announced upon exiting the call and the Landlord confirmed that this was her that had called in. All in attendance provided a solemn affirmation.

The Tenant advised that she served the property manager the Notice of Hearing package by registered mail on or around November 19, 2019 and the property manager confirmed she received this package and provided it to the Landlords on or around the last week of November 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlords were served with the Tenants' Notice of Hearing package.

The Tenant confirmed that the evidence being relied upon in this hearing was provided to the Landlords prior to the Application being made. D.L. advised that she had received this evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

The Landlord advised that they did not submit any evidence for consideration on this hearing.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on February 1, 2017. Rent was currently established at $2,611.00 per month, due on the first day of each month. A security deposit of $1,225.00 and a pet damage deposit of $1,225.00 were also paid.

D.L. advised that the Tenants were served the Notice by registered mail on or around November 8, 2019. The reason the Landlords served the Notice is because "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 Tenant

confirmed that they received the Notice on or around November 12, 2019 and subsequently made their Application to cancel the Notice. The effective end date of the tenancy was noted as January 31, 2020.

The Landlord advised that he moved into the rental unit in 2002 but he was transferred to Toronto for work in 2015, so the property manager was hired to manage the property. He stated that they moved back near the end of August 2016 and as the rental unit was rented under a fixed term tenancy agreement, they rented their own place and have lived there since. However, their landlord wanted to occupy the residence that they were renting so the Landlord's options were to find a new place to rent or to move back into the rental unit that the Tenants were occupying.

He stated that they had until the end of February 2020 to move from their own residence, but they wanted the tenancy with the Tenants to end a month early so that they could move casually. He advised that they did not get a Two Month Notice to End Tenancy for Landlord's Use of Property from their landlord as his wife was in conversation with their landlord. He speculated that this was only a verbal agreement with their landlord. He does not know when this conversation happened between his wife and their landlord. When pressed for more details about whether there was any written agreement between the wife and their landlord or if their agreement was just verbal, the Landlord became evasive and stated that he did not want to provide any answers. Then, his default responses reverted to him not knowing anything about this agreement as his wife was the one dealing with the situation.

D.L. confirmed that the Landlords moved away and hired the property management company, but when they returned, as the rental unit was rented under a fixed term tenancy, they ended up renting their own place. She stated that the Landlords have always wanted to move back into the rental unit eventually, but the timing had never been right. When the Landlords advised D.L. of their intention to move back into the rental unit, she cautioned them that they must move in as per the reason on the Notice.

The Tenant advised that she had had a conversation with the Landlord's wife, who had informed her that they had been given an eviction notice by their landlord, so she was expecting to see a copy of this notice produced as documentary evidence for this hearing. She stated that she had been having problems with a fridge in the rental unit and had been in conversation with D.L. regarding a repair of the fridge since mid-October 2019. She stated that many weeks passed without any resolution, and D.L. had told her that if she kept pursuing a request for the Landlords to fix the fridge, the Landlords would end the tenancy instead. She advised that D.L. suggested that they

pay for a new fridge instead of risking eviction. As this problem was ongoing without any meaningful progress, the Tenants served a letter to the Landlords, dated November 8, 2019, advising them that if the issue was not rectified, they would apply for Dispute Resolution to have an Arbitrator make a decision on this issue. They were then served the Notice by the Landlords, which was also dated November 8, 2019.

D.L. confirmed that she advised the Tenants that it would be in their best interest to deal with the fridge issue themselves as the Landlords did express a desire to move into the rental unit at some point. She stated that the Landlords had advised her that “If there was a lot of trouble or repair issues, the owners would move in instead.” The Landlord did not refute this.

The Landlord explained that they were taking steps to have the fridge fixed or replaced, that they ordered a new fridge on November 19, 2019, and that they replaced the broken fridge on November 23, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlords’ right to end a tenancy in respect of a rental unit where the Landlords or a close family member of the Landlords intend in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlords must be signed and dated by the Landlords; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the repair Order request by the Tenants, as the undisputed evidence is that the broken fridge has been replaced in its entirety, I decline to grant a repair Order as it is not necessary anymore. As such, this claim is dismissed in its entirety.

With respect to the Notice, in considering the Landlords' reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlords, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlords are permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I find it important to note that Policy Guideline # 2A discusses good faith and states that:

> "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… 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... 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."

While the Landlord provided testimony with respect to why they require possession of the rental unit, when he was asked to elaborate on the details of his alleged eviction by his own landlord, he became evasive, he stated that he would rather not provide answers, he claimed ignorance of knowledge of any details, and he deferred any explanations of this situation on the basis that his wife was the one in communication with their landlord. Based on the Landlord's demeanour and responses, it was evident that he either had answers to explain this situation, but he was intentionally not sharing them as they might contradict his testimony with respect to their intention to end the Tenants' tenancy, or what he was alleging was simply not true and he elected not to share anymore information.

While he attempted to explain that he did not have any information regarding the end of their tenancy with their landlord because it was his wife that had had the conversations with their landlord, he was informed that it was his responsibility to be prepared to speak to the issues related to this hearing. I do not find his responses to accord with logic or common sense as I find it dubious that had his own tenancy been ended, that he would not have had some conversations with his wife to understand at least the basic nature or details of why their own tenancy was ending. Furthermore, given that the Landlord's wife had attended at the outset of the hearing but had quickly exited the conference call, if she was the only one that had all the details of the ending of their own tenancy, I am satisfied that she was available to attend the hearing to provide relevant testimony on behalf of the Landlords. As well, I find it important to note that the Landlords have

provided no documentary evidence to support his testimony about the end of their own tenancy. While it may be reasonable that the Landlords have an intention to move into the rental unit, I find that the Landlord's evasive demeanour and lack of evidence to support his allegation of his own tenancy ending causes me to doubt the reliability of his testimony and his credibility on the whole.

When reviewing the totality of the evidence, the consistent and undisputed evidence is that there was a problem with the Tenants' fridge, that they had brought this up to the Landlords' attention, that many weeks had passed without a suitable resolution, and that the Tenants were cautioned that pursuing this matter further would lead to an eviction. Furthermore, after they served the Landlords a letter requesting that this issue be rectified, they were served the Notice, which was dated the same day as their demand letter for a repair. Based on the testimony and evidence before me, I do not find it to be a coincidence that the Tenants were served the Notice that was dated the same date as their demand letter. I find it more likely than not that the Landlords were not acting in good faith when they served this Notice as it appeared to be an obvious attempt to avoid their obligations to comply with the *Act*.

Ultimately, while it may be the Landlords' intention to occupy the rental unit at some point in time, based on the insufficient evidence and the uncompelling testimony, I am not satisfied, on a balance of probabilities, that the Landlords have established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of November 8, 2019 is cancelled and of no force and effect.

As the Tenants were successful in this application, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of November 8, 2019 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act.*

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*.