



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNL, OLC, DRI, FFT

Introduction

This hearing convened as a Tenants' Application for Dispute Resolution, filed on February 15, 2020 in which the Tenants requested the following relief:

- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on February 15, 2020 (the "Notice");
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and/or the residential tenancy agreement;
- monetary compensation from the Landlord for losses as a result of mould in the rental unit as well as return of rent paid over and above the allowable rent increase amounts;
- disputing a Notice of Rent Increase; and
- to recover the filing fee.

The hearing of the Tenants' Application was conducted by teleconference at 9:30 a.m. on April 23, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by Rule 1.1 which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Hearings before the Residential Tenancy Branch are also scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim nor is it sufficiently related to the Tenant's dispute of the rent increase; accordingly, I exercise my discretion and dismiss these claims with leave to reapply.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified that the tenancy began September 1, 2012. Monthly rent at the time the tenancy began was \$825.00. Current rent is \$1,128.00. The Landlord confirmed that she issued a Notice of Rent Increase on January 4, 2020 from \$1,100.00 to \$1,128.00.

The Landlord stated that the rental unit is a basement suite. The Landlord and her husband, N.J., and their two daughters live upstairs.

The Landlord testified that the reason she issued the Notice is that her in-laws (her husband's parents who are 75 and 76 years old and not have heart conditions) will be moving into the rental unit so that she and her family can care for them. They currently live with the Landlord's brother and sister in law in the same city as the rental unit and have lived with her brother and sister in law for 14 years.

In terms of why they need to move, the Landlord stated that her sister in law was diagnosed with lupus in May or June of 2019. Her brother and sister in law also have four children. Due to her condition, her sister in law is no longer able to care for her four children and her husband's parents.

In response to the Tenants' claims that they she is attempting to avoid her responsibilities under the *Act* and ending this tenancy to avoid dealing with mould the Landlord responded as follows. The Landlord testified that she was informed by the Tenants that there were mould issues in the basement on February 12, 2020. She stated that at that time they were already in discussions with their family as to possibly moving her husband's parents into the basement suite as her father in law was scheduled to have eye surgery in the first week of February. At that time her sister in law informed her that they were having difficulty caring for her husband's elderly parents in addition to their children.

The Landlord testified that when the Tenants informed her of the mould, she informed the Tenants that they would need to renovate the basement as her husband's parents would be moving into the rental unit.

The Landlord stated that as soon as they were informed of the mould issues, they looked at the basement suite and determined that the drywall will need to be removed in the bedroom and the bathroom. The Landlord confirmed that they intend to do this work after the Tenants move out. She stated that they do not know how long it will take to fix the mould issues.

In response to the Landlord's testimony the Tenant N.S. testified as follows.

N.S. stated that they do not believe that the Landlord intends to move her husband's parents into the rental unit. N.S. stated that this is about the Landlord wanting more rent and not wanting to deal with the mould. He stated that the Landlord asked them to pay \$1,250.00. the Tenants informed the Landlord that they needed to issue a proper notice. N.S. stated that this created animosity.

N.S. stated that on February 15, 2020, the Tenant J.M. sent a text message to the Landlord regarding the mould and the toilet seat as well as the Tenant's request for a hole in the wall for a fiber optic cable. N.S. stated that J.M. then called the Landlord. The Landlord mentioned that she would need to do some renovations to the rental unit and would be issuing a Notice to End Tenancy.

J.M. also testified. She confirmed that she sent a text message to the Landlord on February 15, 2020 regarding mould in the rental unit as well as issues with the toilet seat. J.M. stated that in response she received a text from the Landlord's daughter who gave the Tenants a different cell phone number to reach the Landlord. J.M. then spoke to the Landlord about the technician drilling a hole in the wall for the fiber optic cable. J.M. stated that the Landlord stated that if there was mould, she would need to do renovations and she would have her oldest daughter move downstairs.

J.M. stated that the Landlord came in to look at the mould. At that time, the Landlord handed the 2 Month Notice to the Tenants. J.M. stated that she was surprised because the Notice referenced parents, not her daughter.

J.M. stated that the Landlord never spoke about her elderly in-laws. J.M. also stated that she has never seen her in-laws in 8 years. J.M. further stated that during the hearing was the first time she has been informed that the Landlord's in-laws have health issues.

In reply, the Landlord stated that when the Tenant called on February 15, 2020, they were discussing how to handle the situation with her in-laws. The Landlord stated that the reason she told the Tenants that their oldest daughter was going to move into the basement was because she is studying nursing and will be living with her grandparents to help them.

The Landlord also stated that when her father in law had his eye surgery his health dramatically declined. He was no longer able to help with his wife with her medications.

The Landlord stated that she has tried to bring in a mould expert to look at the rental unit but has not been able to do so due to Covid-19; she further that she should be able to have someone come in within 30 days of the hearing date.

Analysis

The Tenants seek to set aside a 2 Month Notice to End Tenancy for Landlord's Use which was issued pursuant to section 47 of the *Residential Tenancy Act*; the relevant portions of this section read as follows:

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

...

(3) A landlord who is an individual may 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.

...

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

In this case, the Landlord claims her elderly in-laws will be moving into the rental unit due to ill health. The Landlord's in-laws meet the definition of "close family member" as provide above.

The Tenants submit that the Landlord is attempting to avoid the *Act* and have an ulterior motive to raise the rent and avoid making necessary repairs to the rental unit.

While the timing of the issuance of the Notice likely raised suspicious for the Tenants, I find the Landlord issued the Notice in good faith. I am satisfied the Landlord and her family were in discussions as to the care of her in-laws in the early days of 2020. I accept the Landlord's testimony that her father-in-law's eye surgery was scheduled for early February 2020; presumably this surgery was scheduled some time in advance and likely prompted the family discussions as to his care post-surgery. I also accept the Landlord's testimony that her sister-in-law was diagnosed with lupus in the spring of 2019, and that she has found it increasingly difficult to care for her four children in addition to her in-laws. I accept the Landlord's testimony that her daughter will reside in the rental unit with her in-law's in order to provide the necessary care.

I therefore dismiss the Tenants' request that I cancel the Notice. The tenancy shall end in accordance with the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in terms of form and content. As such, and pursuant to section 55, the Landlord is granted an Order of Possession effective 1:00 p.m. on April 30, 2020.

The Tenants advised during the hearing they were unable to move from the rental unit due to Covid-19, as properties are not available, and they are unable to attend showings. The Tenants were reminded that they should make their best efforts to find alternate accommodation in the event I dismissed their claim. The parties were also advised that *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

During the hearing the Landlord consented to hiring a mould expert. Accordingly, and pursuant to sections 32 and 62(3) of the *Act*, I order as follows:

1. In the event the Tenants remain in occupation of the rental unit beyond April 30, 2020:
 - a. the Tenants shall continue to pay rent, such payment shall be deemed for use and occupancy only;
 - b. the Landlord shall provide the Tenants with receipts for payment confirming the funds are for use and occupancy only;
 - c. by no later than May 23, 2020, the Landlord shall hire a mould expert to attend the rental unit to ascertain the presence of mould and to provide the Landlord with recommendations for remediation. The Landlord shall obtain a written report from the mould expert and shall provide the Tenants with a copy within 7 days of receipt of same;
 - d. should the Landlord be unable to hire a mould expert to attend the rental unit by May 23, 2020, she shall inform the Tenants as soon as possible; and,
 - e. the Tenants shall cooperate with the Landlord's request for access to the rental unit for the above purposes.

As the Tenants have enjoyed only partial success with their Application, I dismiss their request for recovery of the filing fee.

Conclusion

The Tenants' request for an Order canceling the Notice is dismissed without leave to reapply.

The Landlord is granted an Order of Possession effective April 30, 2020.

The Landlord consents to the Tenants' request for an Order that the Landlord address the mould in the rental unit as set out in this Decision.

The Tenants' claim for monetary compensation from the Landlord and to dispute a rent increase is dismissed with leave to reapply.

The Tenants' claim for recovery of the filing fee is dismissed without leave to reapply.

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: April 29, 2020

Residential Tenancy Branch