



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FFT

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution. The male Tenant stated that he does not wish to withdraw his application to set aside the Two Month Notice to End Tenancy for Landlord's Use, even though the rental unit has been vacated.

The male Tenant stated that the Application for Dispute Resolution and evidence submitted to the Residential Tenancy Branch in February of 2020 were personally delivered to the business address of the realty company named as a Respondent in this matter. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On April 15, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The male Tenant stated that on April 14, 2021 these documents were personally delivered to the business address of the realty company named as a Respondent in this matter. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On April 20, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on April 20, 2021. The male Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

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

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

In documents submitted to the Residential Tenancy Branch in April of 2021, it is apparent that the Tenants are seeking a monetary award of \$22,483.00 in compensation for costs and losses associated to the manner in which this tenancy ended. At the hearing the male Tenant stated that the Tenants did not file an application to amend the Application for Dispute Resolution to include a claim for financial compensation.

At the hearing the Landlord stated that she is willing to allow the Application for Dispute Resolution to be amended to include a claim for compensation for costs/losses related to the manner in which this tenancy ended. As the Landlord is willing to the amendment, I amend the Application for Dispute Resolution to include a claim for compensation for costs/losses related to the manner in which this tenancy ended.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Are the Tenants entitled to compensation for costs/losses related to the manner in which the tenancy ended?

Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on March 01, 2019;
- rent was due by the first day of each month;
- the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, dated January 19, 2021, which declared that the Tenants must vacate the rental unit by March 31, 2021;

- the reason for ending the tenancy cited on the Two Month Notice to End Tenancy for Landlord's Use 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; and
- the rental unit was vacated on March 31, 2021.

The Landlord stated that:

- the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants because she wished to move into the rental unit;
- prior to serving the Two Month Notice to End Tenancy for Landlord's Use she was "couch surfing" in a different community;
- she was "couch surfing" because she has recently left an "abusive relationship";
- she moved into the rental unit on April 06, 2021; and
- she is currently living in the rental unit.

The male Tenant stated that:

- he disputes the Two Month Notice to End Tenancy for Landlord's Use, in part, because of the current housing crisis;
- he disputes the Two Month Notice to End Tenancy for Landlord's Use, in part, because the Landlord has not been empathetic to the impact a move will have on the Tenants;
- he disputes the Two Month Notice to End Tenancy for Landlord's Use, in part, because the Landlord has "no believable reason" to end the tenancy;
- he disputes the Two Month Notice to End Tenancy for Landlord's Use, in part, because it is not "socially responsible" for the Landlord to end the tenancy;
- he has "no reason to believe" the Landlord is living in the rental unit; and
- he has no evidence the Landlord is not living in the unit.

The Tenants submitted a lengthy written submission outlining the costs/losses he experienced as a result of this tenancy ending in the manner that it ended. At the hearing the male Tenant stated that all of the claims for financial compensation relate to the manner in which the tenancy ended and the impact the move has had on the Tenants. The male Tenant was unable to explain how his losses related to the Landlord breaching a specific section of the *Act*.

In their written submission, the Tenants submit that the compensation they were granted in the equivalent of one month's free rent is "grossly inadequate" when compared with the financial losses suffered by the Tenants.

Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence, I find that the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, in which the Landlord declared that she intends to end the tenancy pursuant to section 49(3) of the *Act*.

On the basis of the testimony of the Landlord and in the absence of any reliable evidence to the contrary, I find that the Landlord was acting in good faith when she served the Two Month Notice to End Tenancy for Landlord's Use, as she served it because she intended to move into the rental unit.

On the basis of the testimony of the Landlord and in the absence of any reliable evidence to the contrary, I find that the Landlord moved into the rental unit earlier this month and prior to that she was "couch surfing". I find that this further supports my finding that the Two Month Notice to End Tenancy for Landlord's Use was served in good faith.

I therefore find that the Landlord has established grounds to end this tenancy pursuant to section 49(3) of the *Act*, and I dismiss the application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Two Month Notice to End Tenancy for Landlord's Use should be set aside because there is a housing crisis, because the Landlord was not empathetic to the needs of the Tenants, or because it was not "socially responsible" for the Landlord to end the tenancy. Those are simply not grounds for setting aside a lawful notice to end tenancy nor are they "good faith" arguments as that term applies to the service of a Two Month Notice to End Tenancy for Landlord's Use.

Section 67 of the *Act* grants me authority to award compensation to a tenant if the tenant experiences damage or loss because the landlord did not comply with the *Act*, or the tenancy agreement. While I fully accept the Tenants experienced costs as a result of being served with a Two Month Notice to End Tenancy for Landlord's Use, I cannot conclude that the Landlord breached any part of the *Act* by serving this Notice. As any losses experienced by the Tenants were not the result of the Landlord breaching the *Act*

or the tenancy agreement, I cannot award compensation for those losses. The Tenants' application for costs/losses related to the manner in which this tenancy has ended is dismissed, without leave to reapply.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Although the Tenants characterize this amount of compensation they received as "grossly inadequate", I am satisfied they have been properly compensated pursuant to section 51(1) of the *Act*.

I find that the Tenants' application is without merit and I therefore dismiss the application to recover the fee paid to file this Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed in its entirety, without leave to reapply.

As the Landlord has moved into the rental unit, I find there is no need to grant an Order of Possession to the Landlord.

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 30, 2021

Residential Tenancy Branch