



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, DRI, RP, OLC, LRE, LA, FFT

Introduction

On July 1, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for a rent reduction
- to dispute a rent increase
- to suspend or set conditions on the Landlords right to enter the rental unit
- for an order that the Landlord repair the rental unit
- for an order regarding locks and access to the unit
- for an order that the Landlord comply with the Act, regulation, or tenancy agreement.

On July 27, 2021 the Tenants submitted another Application under the *Act* to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated July 26, 2021 (“the Two Month Notice”). The Tenants’ second application was joined to be heard with the first.

The matter was set for a conference call hearing. The Tenants and Landlords appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The Tenants provided documentary evidence in support of their application; however, the Landlords did not provide any documentary evidence. The Landlords confirmed that they received the Tenants’ documentary evidence. The parties were cautioned that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on issuance of the Two Month Notice. The Tenants' other claims are dismissed with leave to reapply.

Issues to be Decided

- Does the Landlord have a good faith intention to end the tenancy to allow a close family member to move into the rental unit?
- Is the tenancy ending and are the Landlords entitled to an order of possession for the rental unit?

Background and Evidence

The Landlords and Tenants testified that the tenancy began on in February 2007 and is on a month-to-month basis. Rent in the amount of \$1,750.00 is to be paid to the Landlord by the first day of each month.

The Landlord issued the Two Month Notice to the Tenants by posting it to the door. The reason for ending the tenancy cited within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The child of the Landlord or Landlords spouse.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is October 1, 2021.

The Two Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on July 27, 2021, within the required time period.

The Landlord provided testimony on why the Two Month Notice was issued. The Landlords testified that their daughter wants to move near them and also wants to be on her own. The Landlord testified that their daughter currently lives with them. The Landlord testified that the rental unit is located one block away from them. The Landlord testified that the Two Month Notice was issued for their daughter to occupy the rental unit.

In reply, the Tenants testified that the Landlord has been trying to illegally increase their rent for the past year and has also failed to make repairs to the rental unit. The Tenants also stated that the Landlord approached them in an attempt to gain possession of the lower basement of the unit so they can rent it out.

The Tenants testified that in April 2021, the Landlords demanded to meet and discuss the tenancy. The Tenants stated that on April 6, 2021 the Landlord told them they could be renting the house out for \$2,000.00 to \$2,500.00 each month. The Tenants stated that the Landlord wanted them to pay more rent and they responded by informing the Landlords that rent increases are not permitted at this time. The Tenants stated that they proposed they could agree to an increase to \$1,876.00 per month along with the Landlord making some needed repairs to the home; however, the Landlord declined that proposal and countered with the amount of \$1,980.00 per month. The Tenants did not agree to the increase.

The Tenants stated that the Landlord stated that since the Tenants did not agree to the rent increase, they could give back the lower part of the rental unit for the Landlord to rent out. The Tenants did not agree to this proposal.

The Tenants stated that they have asked the Landlord to make repairs to the rental unit over the years and their reply is always that we do not pay enough rent for the Landlord to make repairs. The Tenants stated that they recently asked the Landlord to repair the rotten wood railing on the sundeck and the Landlord has not made any repair. The Tenants provided a copy of a message sent to the Landlords on April 12, 2021 listing and requesting repairs to a sundeck, kitchen floor, bathroom, fence, and gate. The Tenants provided photographs of a sundeck and railing and kitchen floor and bathroom that appears to need maintenance/ repair.

The Tenants submitted that after they refused to accept the rent increase; and after they asked for repairs, the Landlord issued the Two Month Notice.

In reply, the Landlords provided testimony confirming that they approached the Tenants and told them that the house could rent for \$2,000.00 to \$2,500.00 each month. The Landlord stated that the Tenants offered \$1,875.00 and he countered with \$1,950.00. The Landlord stated that he later called the RTB and was informed that a rent increase is not legally permitted at this time.

The Landlord stated that he initially wanted to meet with the Tenants because he had lost his copy of the tenancy agreement and wanted to prepare a new agreement for the parties to sign. The Landlord stated that he never asked the Tenants to give up the basement suite.

The Landlord confirmed that on April 12, 2021 the Tenants asked him to make a repair to the deck railing, and that he did not make the repair. The Landlord stated that he is scared to attend the unit in case a harassment claim is made against him.

The Landlord stated that the Tenants never asked for other repairs.

The Tenants replied that they sent the Landlord a list of items for repair in April 2021.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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)).

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Two Month Notice indicates 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. I find that the property owner intends for their daughter to move into the rental unit and therefore she meets the definition of a close family member. I find that the Two Month Notice complies with section 49(3) of the Act.

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit. I accept the Landlords' testimony that their daughter intends to occupy the rental property.

I have turned my mind to whether or not the Landlord has an ulterior motive or is trying to avoid obligations under the Act, and I have considered that the Landlord approached the Tenants and attempted to have them sign a new tenancy agreement with an illegal increase in the monthly rent. It appears to me that the Landlords feel they are missing out on rent they could be receiving under current market conditions.

I have also considered that the Tenants asked for repairs to the rental unit a short period before the Landlords issued the Two Month Notice. The Landlord admittedly did not take any action to repair a rotten deck railing. I find that the Tenants also requested other repairs to the unit. With respect to repairs, based on the evidence before me, I find that the Landlord is avoiding an obligation to make repairs to the rental unit.

I find that the Landlord's recent attempts to illegally increase the rent suggests that the Landlord has an ulterior motive to end the tenancy and I also find that the Landlord does not want to fulfil their obligations under section 32 of the Act to maintain and repair the rental property. I find that it is more likely than not that the Landlords are attempting to end the tenancy to avoid obligations under the tenancy agreement and the Act.

The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2021 is granted. The Two Month Notice is cancelled.

The tenancy will continue until ended in accordance with the legislation.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. Recovery of the fee for the second application is declined as the Tenants could have amended the first application

rather than submit the second application. I authorize the Tenants to withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2021, is successful. I find that it is more likely than not that the Landlords are attempting to end the tenancy to avoid obligations under the tenancy agreement and the Act.

The Tenants have leave to reapply for the issues that were severed and not heard.

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: November 3, 2021

Residential Tenancy Branch