



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT, MNETC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of the property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The 2 adult tenants and the landlord attended the hearing and the landlord was represented by Legal Counsel.

At the commencement of the hearing the parties advised that the tenants have moved out of the rental unit, and the tenants wish to amend the application to include a monetary claim for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement related to the Two Month Notice to End Tenancy for Landlord's Use of Property. For clarity, one of the tenants indicated that the amendment should focus on whether or not the tenants are entitled to compensation due to fraudulent eviction. The landlord agreed to the amendment.

Accordingly, I dismiss the tenants' application for an order cancelling a notice to end the tenancy for landlord's use of the property. Further, since the tenancy has ended, I dismiss the tenants' application for an order that the landlord comply with the *Act*, regulation or the tenancy agreement.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the landlord has accomplished the purpose for ending the tenancy, or has used the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property for at least six months after the effective date of the Notice?

Background and Evidence

The landlord testified that this tenancy began about 8 years ago, which was about 4 years before the landlord purchased the property about 4 years ago. The tenants vacated the rental unit on March 1, 2022. Rent in the amount of \$2,200.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord at the time collected a security deposit from the tenants in the amount of \$1,100.00, all of which has been returned to the tenants. The rental unit is a basement suite.

The landlord further testified that on January 1, 2022 the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy of a portion of the notice has been provided by the tenants for this hearing. It is dated December 9, 2021 and contains an effective date of vacancy of March 1, 2022. 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), specifying the child of the landlord or landlord's spouse.

The landlord and daughter had discussions about moving into the rental unit while the landlord's daughter attends university, but the landlord wanted to make it nice for her. The landlord's daughter moved boxes into the rental unit and the landlord started soundproofing and electrical work. The landlord started renovations in mid-March, and has not made any attempt to re-rent. Old drywall has been removed and a lot of demolition before putting new things in. The landlord hired contractors, and work has been done in the kitchen and bathroom. Renovations are almost finished and the landlord's daughter is living with the landlord until renovations are complete. New windows will be installed on September 6, 2022 and kitchen cabinets are being delivered today. The basement suite is a 4 bedroom unit and the landlord's daughter will reside there, and her pets are there. The landlord's daughter can move in before windows are done.

The landlord has also provided a BC Identification card of the landlord's daughter showing the rental home as her address, and an Affidavit of the landlord's daughter stating that she moved into her mother's home at the rental home on March 1, 2022 and has been living there since. It also states that the photographs provided by the tenants for this hearing contain images of U-Haul boxes which contain her belongings. It also states that the landlord is renovating the suite for her.

The landlord further testified that the landlord only needs to notify the tenants that the landlord will be taking back the house for family to use and is not obligated to say who will be moving in, but did tell the tenants. The landlord's daughter lived with the landlord prior, but wants a suite and it is within the landlord's right to do it.

The first tenant (NP) testified that the eviction was fraudulent and believes it was retaliatory. The landlord regularly refused to address problems in the suite, such as leaky sinks, the fridge leaked and was slippery and dangerous. The landlord also said she would replace the stove which was peeling paint, and the fridge and stove were to be replaced but only the fridge was replaced after 2 years of the tenants complaining to the landlord. The new fridge was only there for 2 or 4 months.

The tenants complained for 2 years' worth of outrageous interference, such as piles of wood, nails and noise. The tenant's husband works from home and was not able to access his office. The sink didn't get fixed for over a year and a half which created a dangerous situation. The landlord kept promising things to be fixed when she had the time and money, then within weeks of finishing renovations upstairs. The tenant probably picked up 1,000 nails.

Frequently contractors attended without notice repeatedly, which went on for 2 years. There was so much demolition upstairs that there was dirt in the tenants' animal food, messes, broken glass from windows being pushed out of the upstairs unit onto the tenants' walkway, which was the only way for the tenants to get to their car. There was no attempt by the landlord to clean it. The tenant cleaned it, which was extremely upsetting.

The tenants and their animals were exposed to toxic materials including varnish on floors upstairs and the tenants could see daylight in the upstairs unit for an extensive amount of time; there were holes in the basement suite ceiling. There was incredible noise at night and early morning, all on a promise that it would be better. However, the tenants then received the Two Month Notice to End Tenancy for Landlord's Use of Property, which was not issued in good faith.

The tenants did not intend to dispute the Notice. It was a hostile environment. The tenants' rental unit was a disaster with paint peeling off the bath tub, the floor had huge cracks and holes, and things that would cut a person's feet, so it was not worth fighting to stay. Photographs have also been provided for this hearing.

The tenant does not believe that the landlord's daughter will occupy 1750 sq ft for any length of time. The tenants' new rent is now almost double, and the tenants accrued a lot of monetary damages to find a place during the school year and have a teenager.

The renovations were in the works months prior without telling the tenants, and if they had more notice they would have happily moved out.

It was a very difficult situation. The first thing the landlord did was bury the tenants in mulch and dirt to get around City ordinances to renovate by adding another level on the house. The landlord was not allowed to do that. The tenants' rental unit was above ground and the landlord trucked in dirt and stuff in front of the tenants' windows and buried them. The inspector wouldn't allow it, and the landlord had to abandon that plan, then when it became convenient, the landlord issued the Notice to end the tenancy.

Then the landlord purchased more property in the USA but refused basic upkeep to the rental unit saying that she didn't have the means to do it. The landlord played upon the tenant's personal sympathy.

The second tenant (DA) testified that the photographs provided for this hearing were taken about 3 weeks after March 1, 2022, but the description states April 7, 2022.

The tenant researched after the eviction because the tenants were sure it was retaliatory. When the tenants put their foot down about replacing the fridge, the landlord offered a broken, used and dirty fridge that the landlord was throwing away, proposing that as a solution. When the tenants refused, the landlord clearly started a change in tone with the tenants and very disrespectful.

According to BC law the landlord must be acting in good faith, evicting the tenants of 7 years for a single person to occupy the rental unit. The tenant believes it to be an attempt to improve the property and then re-rent. That's called a renoviction. When the tenant saw the rental unit after vacating, there was no part of the rental unit that had not been demolished.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The evidence includes a sworn Affidavit from the landlord's daughter saying that she moved belongings into the rental unit on March 1, 2022, and that while being renovated, the landlord's daughter shared a bed with the landlord. The tenants' photographs also show U-Haul boxes. The landlord's daughter had previously lived in another place with a boyfriend.

Sometimes renovations take time and contractors sometimes work part-time. It is not a large team doing major renovations, which is why it has taken so long.

The tenants' testimony about lack of repairs during their tenancy is completely exaggerated and not objective in the tenants' evidence, nor any safety hazards. Those claims are not relevant, and the landlord's Legal Counsel did not agree to the amendment of the tenant's application to include lack of repair, only for compensation related to the Two Month Notice to End Tenancy for Landlord's Use of Property.

SUBMISSIONS OF THE TENANT (NP):

The tenant did not know that all the previous events would be heard, but the landlord was acting in bad faith the whole time. The tenants now ask that the Residential Tenancy Branch consider bad actions of the landlord to determine whether or not the landlord has acted in bad faith. The evidence proves a pattern and lack of any attention by the landlord to fix the space for the tenants. The landlord has been malicious and it shocked the tenant that someone could get away with that. It cannot be legal, and is certainly not moral.

SUBMISSIONS OF THE TENANT (DA):

The initial notice to end the tenancy states that the landlord's daughter would be taking occupancy on March 1, 2022 but she didn't. Copies of text messages to that effect have also been provided for this hearing.

Analysis

Firstly, the landlord and Legal Counsel agreed that the tenants' application be amended to include a monetary claim for compensation related to the Two Month Notice to End Tenancy for Landlord's Use of Property and the tenant (DA) clarified at the commencement of the hearing that the amendment sought is compensation due to "fraudulent eviction." The landlord has not agreed to amend the application to include compensation for any other purpose, and I decline to decide on any other form of compensation.

The *Residential Tenancy Act* states that a landlord may serve a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) if the landlord has good faith intent to use the rental unit for the purpose contained in that Notice. If the tenant believes that the landlord is not acting in good faith, the tenant may apply to cancel the Notice and hearing is convened to determine whether or not the landlord has established good faith intent. If the landlord has not demonstrated good faith, the Notice is cancelled and the tenancy continues.

Once a tenant has vacated a rental unit in accordance with the Notice, the tenant may apply for compensation for the landlord's failure to use the rental unit for the purpose contained in the notice within a reasonable time after the effective date of the Notice and for at least 6 months beginning within a reasonable period after the effective date of the Notice. The compensation the tenant would be entitled to on such a finding is the equivalent of 12 months rent payable under the tenancy agreement.

In this case, the tenants vacated the rental unit before the hearing, and believed that by filing the application the tenants were actually applying for compensation, and the landlord has consented to the amendment.

I refer to Residential Tenancy Policy Guideline 50 – Compensation for Ending a Tenancy, which states, in part:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended. Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The tenants' position is that the landlord has no intention of using the rental unit, nor has used the rental unit for occupancy by the landlord's daughter, but has instead gutted the rental unit, which amounts to a "renoviction." My understanding of the law is that a "renoviction" is renovating a rental unit after a tenant is given a Notice in order to re-rent at a higher rate, or ending the tenancy with a Four Month Notice to End Tenancy for Demolition or Conversion of the Rental Unit to Another Use, and there are new laws surrounding that.

The landlord's position is that the landlord's daughter wishes to occupy the space while attending university and the renovations are being done for the landlord's daughter, not to re-rent.

I have reviewed the Notice and it is dated December 9, 2021 and was served on January 1, 2022, and contains an effective date of vacancy of March 1, 2022.

The landlord testified that the U-Haul boxes belong to the landlord's daughter who is living with the landlord until renovations are finished and that the renovations started in mid-March. The landlord also testified that the work commenced is removing old drywall and a lot of other demolition, and new windows arrive on September 6, 2022.

I have also reviewed the Affidavit provided by the tenant's daughter which corroborates the landlord's testimony.

In considering the evidence, although the tenants believe the landlord did not act in good faith and the Notice was given in retaliation, there is nothing in law that prevents a landlord from renovating the rental unit for the use of the landlord's daughter.

Considering the photographs provided by the tenants showing that the rental unit has been gutted, and the Affidavit of the landlord's daughter, as well as testimony of the landlord that the U-Haul boxes contain the belongings of the landlord's daughter, and the testimony of the tenant (NP) that the rental unit is 1750 sq ft, and the testimony of the landlord that the renovations take time, I am satisfied that the landlord has established that the rental unit has not been used for any other purpose or that it will be.

There are 2 components that compensation may be awarded:

1. if the stated purpose for ending the tenancy was not accomplished within a reasonable period after the effective date of the notice, and
2. if the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the effective date contained in the Notice is March 1, 2022. Considering all of the evidence, I am satisfied that the landlord has established that the stated purpose for ending the tenancy has been accomplished within a reasonable period after the effective date of the Notice. I find that the 6 month period began on March 1, 2022 and expires on September 1, 2022. The 6 month period has not yet expired, and perhaps the tenants were confused with respect to what they were applying for, however the

tenants should not be permitted to re-file for any other compensation related to the Notice.

The tenants' application for compensation related to the Two Month Notice to End Tenancy for Landlord's Use of Property is dismissed.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for monetary compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property under Section 51(2) of the *Act* is hereby 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: August 14, 2022

Residential Tenancy Branch