



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

Both named tenants and both named landlords attended the hearing, and the landlords were assisted by Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, including the written submissions of the landlords' Legal Counsel. Therefore, all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, I alerted the parties to the Residential Tenancy Rules of Procedure which indicate that multiple applications contained in a single application must be related, and I found that the primary application concerns a notice to end the tenancy, and the hearing focused on that issue. The tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is dismissed with leave to reapply.

Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The first landlord (MB) testified that this fixed-term tenancy began on December 1, 2013 and reverted to a month-to-month tenancy after July 31, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$2,750.00 was payable on the 1st day of each month, which has increased to \$3,176.75 and there are no rental arrears. On December 1, 2013 the landlords collected a security deposit from the tenants in the amount of \$1,375.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family house, and a copy of the tenancy agreement has been provided for this hearing.

On March 28, 2023 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to one of the tenants. A copy has been provided for this hearing and it is dated March 28, 2023 and contains an effective date of vacancy of May 31, 2023. 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 landlord or the landlord's spouse.

The landlord further testified that the landlords currently reside in another house owned by the landlords across the street from the rental unit. After purchasing the rental home, the landlords completed renovations on their current residence, which took a years and were completed in September, 2022. The landlords' son has just finished university, and the landlords intend to move into the rental unit, leaving their current home for their son to occupy, who will eventually inherit it. The landlord has also provided a sworn Affidavit which indicates that the landlords do not intend to rent their current residence, but will occupy the rental home and their current home will be occupied by the landlords' son.

The second landlord (DB) testified that the landlords want to move into the rental house that they own and want their son to live in the landlord's current residence, to be his own for his future. The landlord has also provided a sworn Affidavit which includes the exact information as the Affidavit of the first landlord.

The first tenant (KL) testified that there has been a series of harassment, inspections, failure to make repairs, and failing appliances and a type of narcissistic tendencies of the landlord. Behaviours are in bad faith, and the landlords had no intention to deliver

the notice to end the tenancy. The tenants had made an application on March 24, 2023 for the landlords to finally make repairs, and the result was delivering the Notice.

In November, 2021 a burner on the stove and the wall oven stopped working. The landlords had accused the tenants of damaging the stove top without any evidence. The landlords replaced the wall oven with a smaller one that had no door latch and didn't fix it.

The tenant recorded an argument that the parties had at the door wherein the tenant asked the landlords to provide the tenants with information in written format, and to notify the tenants if the landlords were attending, but that offended the landlord who said she wouldn't fix anything. Then in June, the landlord gave the tenants 12 hours notice to do tree cutting, verbally, which upended the tenants' day. The landlord tried to fix the stove top but a repair person broke it more, and until April the tenants only had 2 burners. The only effort the landlords made between November, 2022 and April, 2023 was the stove top, which broke it more. The repair person was concerned of electrical shock.

Due to the harassing nature of the landlords, knowing that the rental market is dire, and that the tenants' income won't cover another adequate rental unit is not an honest intent.

The second tenant (KS) testified that this has been very stressful for the tenants. The tenant has a seizure disorder and the landlords have seen the tenant being taken away.

The tenants have 3 young children in early high school. The tenants have been in the rental unit for 10 years, and the landlords are adding more difficulty and duress. The landlords knew that the tenants wanted the kids to stay at their school, but didn't fix the oven or the stove and just don't like the tenants.

The landlords rented the home for 2 years prior to this tenancy, so being served with the Notice is a surprise to the tenants.

The tenants have also provided a document entitled "Sequence of Events," which sets out issues with the tenancy agreement from August 2017 to the date the Notice was issued, March 28, 2023. It also indicates that the tenants served the Dispute Resolution package to the landlords on March 24, 2023, and that based on the way the tenants have been treated, the tenants believe the Notice was served in bad faith and in retaliation to the tenants' dispute, and considering the conditions that the landlords had agreed to.

SUBMISSIONS OF THE LANDLORDS' LEGAL COUNSEL:

The landlords had the intention of using the rental unit for over 10 years, and evidence of the landlords' son graduating from university, and they discussed a move-in.

SUBMISSIONS OF THE LANDLORD (DB):

The landlords wanted to use the time in the summer months to move, recognizing that the official timing is 2 months after issuing the Notice. It was not intended to have the tenants move out a month before the end of the school year but the landlords knew the tenants would dispute it and it would drag on. The landlords have been good landlords.

SUBMISSIONS OF THE TENANTS:

The landlords' testimony is just lies.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice, with no ulterior motive. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it, and good faith are in dispute.

I have reviewed all of the evidence, including the Affidavits provided by the landlords, and the Sequence of Events provided by the tenants. That document sets out numerous issues with the tenancy, including a demand by the landlords that the tenants accept a 10% increase in 2017 and suggesting that again in November, 2021.

I also reviewed the Decision of the director made on June 5, 2023, to ensure that I do not make any findings of fact or law that have already been adjudicated upon. The Interim Decision indicates that the tenants had applied for an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlords make repairs to the rental unit or property; and an order that the landlords comply with the *Act* or the tenancy agreement. The Interim Decision also states that at the hearing the tenants advised that the repairs had been made, and due to insufficient time, the balance of the tenants' application is adjourned for continuation. The new date scheduled is September 26, 2023.

Ending a tenancy, specifically a long-term tenancy is a very serious matter. The landlords have also provided Affidavits from acquaintances indicating that each has heard from the landlords over the years that the landlords intended to eventually move into the rental unit. It may not be coincidence that the landlords decided to do that now since the tenants have applied for relief, but that in itself does not indicate bad faith.

What's really missing in the landlords' evidentiary material is any indication from the landlords' son that he intends to move into his parents' home, or that he has graduated from university. The landlords do not contend that their son will occupy the rental unit, however considering the lack of information from the adult son, when strangers have provided Affidavits, and considering the landlords' insistence on raising the rent, combined with the outstanding hearing before the Residential Tenancy Branch, I find that the landlords have not demonstrated good faith with no ulterior motive. Since the landlords issued the Notice within days of being served with the tenants' other application, effective 1 month prior to the end of the school year, I find that the landlords have issued the Notice in retaliation for the tenants' other application currently scheduled for a hearing before another Arbitrator. That is, in my opinion, an ulterior motive.

Therefore, I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property and the tenancy continues until it has ended in accordance with the law.

There is nothing in law that prevents the landlords from issuing another similar Notice, but the landlords must be able to establish no other motive for ending the tenancy.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order to the landlords and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed, with leave to reapply.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated March 28, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: July 09, 2023

Residential Tenancy Branch