



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prudential Kelowna Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The tenant also provided evidentiary material to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy began as a fixed term tenancy on February 1, 2013, expired on July 31, 2013 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of

the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord.

The tenant further testified that on May 21, 2014 the parties attended a hearing wherein the tenant had applied for an order cancelling a notice to end tenancy for cause. The notice to end the tenancy was cancelled by the Arbitrator at that hearing. Two days after receiving the Decision, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. A copy of the notice has been provided, and it is dated May 28, 2014 and contains an expected date of vacancy of July 31, 2014. The reason for issuing the notice states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The tenant also testified that if the landlord had been honest and served the 2 Month Notice in the first place, the tenant would have moved out. But instead, the landlord made up false accusations which were not proven. As a result the tenant feels harassed and wrongfully accused.

The tenant also denies that the rental unit is in need of renovation; it was newly renovated when the tenant moved in which is why it was attractive. The laminate flooring was new, new paint throughout and the cupboards are immaculate. The carpets are "tired."

The tenant has not received any compensation from the landlord and the tenant has paid rent every month.

The tenant claims \$3,000.00 for moving expenses, \$1,500.00 for a month's rent at a new rental unit, \$750.00 for a security deposit at a new rental unit, and \$2,500.00 for harassment.

The landlord's agent testified that the 2 Month Notice to End Tenancy for Landlord's Use of Property was served on May 28, 2014 by posting it to the door of the rental unit.

The landlord's agent further testified that the owner is elderly and wants to retire. The rental unit was on the market for sale but didn't sell. The owner wants to renovate to get the rental unit to a state of decoration and repair that will assist with the sale, and in order to complete the work, the rental unit needs to be vacant.

The linoleum, carpets, laminate, and cupboards are all being replaced and no permits are required. The laminate is about 6 years old, and the owner wants to replace it with

hardwood. The carpets are the original carpets and the rental unit is about 1992 era. The owner purchased it in 1996.

The landlord has also provided a copy of an email from a contractor who states that in order to complete the work, the rental unit has to be vacant. A letter from the owner has also been provided which states that in order to sell the rental unit, the owner needs to terminate the tenancy and make upgrades.

Analysis

Where a notice to end tenancy is disputed by a tenant, the onus is on the landlord to establish that the notice was issued in accordance with the *Residential Tenancy Act*, which may include the reasons for issuing it.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The landlord's agent testified that the owner is elderly, wants to retire, has tried to sell the rental unit, needs to renovate in order to make the rental unit more attractive for a perspective purchaser, and no permits are required. The *Residential Tenancy Act* states that a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith to demolish the rental unit or renovate or repair the rental unit in a manner that requires it to be vacant. The tenant is not satisfied that it needs to be renovated, however, the landlord's agent testified that all flooring and cupboards need to be replaced, that the rental unit is a 1990s era.

I refer to Residential Tenancy Branch Policy Guideline 2 – Good Faith Requirement When Ending a Tenancy, which explains that "...a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy." I have reviewed the letter of the contractor and of the owner, and in the circumstances, I am satisfied that the landlord has a good faith intention to use the rental unit for the purposes stated in the notice to end the tenancy, and the tenant's application for an order cancelling the notice to end tenancy is hereby dismissed without leave to reapply.

With respect to the monetary claim, I have no evidence to satisfy me that the landlord acted maliciously when the previous notice to end tenancy was issued, and therefore the tenant is not entitled to aggravated damages. I also deny the claims for moving expenses, rent at a new rental unit and security deposit at a new rental unit. The tenant is entitled to monetary compensation as set out in the *Act*, which is the equivalent of one month's rent, and I so order.

I order the parties to comply with the *Residential Tenancy Act* with respect to the security deposit.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,200.00.

I order the parties to comply with the *Residential Tenancy Act* in respect of the security deposit.

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: August 15, 2014

Residential Tenancy Branch

