



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated June 1, 2017 and setting the end of tenancy for August 31, 2017.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on June 21, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on June 22, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated June 21, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began 24 years ago. The present rent is \$710 a month. The tenant paid a security deposit of \$250 at the start of the tenancy.

On June 21, 2017 the landlord served a 2 month Notice to End Tenancy on the Tenant. The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Policy Guideline 2

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlord testified he needs the rental unit in order to house his mother in law who is in poor health and needs to relocate to Vancouver to receive medical treatment. She is presently residing with the landlord in a small compact house. The move to the rental unit would provide her with closer access to the Vancouver General Hospital. She and her husband has listed her home in a northern community for sale as they intend to move to Vancouver to be closer to medical help. The mother in law has applied to have hydro and Fortis in her name for the rental unit.

The tenant gave the following evidence:

- He has lived in the rental unit for 24 years
- Around the middle of May he had a conversation with the landlord where the landlord told him that he wanted to renovate his apartment and charge double the rent.
- The rental unit below him is in the process of being renovated. The City put a Stop Work Order on that job as the landlord failed to obtain the required permits.
- The landlord had conversations with the tenant that permits he could modify the rental unit so that the tenant could use one room as an Air B & B.
- On May 29, 2017 the landlord worked on the rental unit below him until late in the evening using power tools. On May 30, 2017 he contacted the City of Vancouver and lodged a noise complaint. On June 1, 2017 a stop work order was placed on the building.
- The landlord could move his mother in law into the suite below him which would be fully renovated.
- His suite is not suitable for an elderly person with chronic medical problems as it is on the second floor (she would have to go up stairs) and there are mould problems.

The landlord responded to the Tenant's evidence by testifying as follows:

- His mother has mental health issues and stairs are not a problem.
- He does not expect the suite downstairs will be completed until December 2017. At the moment it is not livable. There is no kitchen or bathroom.
- There are 13 units in the rental property. All rental units are occupied except the downstairs one which is being renovated.
- The landlord testified the downstairs unit has been promised to another tenant in the building. However, he failed to present evidence to support this testimony.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to prove he has a good faith intention. I accept his evidence that he presently wishes for his mother in law to move into the rental unit. However, the Policy Guidelines provides that the landlord has the burden of proof where the landlord's good faith intention has been called into question. I determined the landlord has an ulterior motive for ending the tenancy based on the following evidence:

- The landlord had discussions with the tenant about renovating the tenant's rental unit and doubling the rent.
- The landlord has renovated many of the rental units in the rental property
- The landlord has the option of speeding up his work on the suite below so that it would be ready for his mother in law to move. He testified it will take him to Christmas but failed to provide sufficient evidence to prove this allegation. If the landlord intends to honor his promise to the other tenant who wishes to rent the renovated unit that move would open the rental unit his is presently living in.
- The landlord has acknowledged the tenant's suite is in need of renovations.

Determination and Orders:

As a result I ordered that the 2 month Notice to End Tenancy dated June 21, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further order that landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

This decision is final and binding on the parties.

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 24, 2017

Residential Tenancy Branch