



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF, MNDC, MNR, MNSD, O, OLC, OPT

Introduction:

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

- a. An order to cancel the two month Notice to End Tenancy dated August 28, 2017
- b. A monetary order in the sum of \$35,000
- c. An order for emergency repairs
- d. An order for the return of the security deposit and/or pet damage deposit
- e. An order that the landlord comply with the Act, regulations and/or tenancy agreement
- f. An Tenants' Order of Possession
- g. 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.

Preliminary Matter:

Rule 2.3 and 2.5 of the Rules of Procedure provide as follows:

"2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

I determined the tenants' claim for a monetary order and for order to keep the security deposit be severed from this application. The issues relating to those claims are not sufficiently related to the application to cancel the 2 month Notice to End Tenancy. Further, the tenants delivered the materials relating to this claim two week prior to the hearing. The tenants are claiming the maximum amount permitted under the Residential Tenancy rules in the sum of \$35,000. While this complies with the latest time the document can served in accordance with the Rules I determined to proceed to hear those claims at this time to amount to a denial of the principles of natural justice as

it does not give the landlords sufficient time to investigate and prepare a defense. The tenants have liberty to file a new application to have those claims heard.

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 tenants received a 2 month Notice to End Tenancy from the landlord on August 28, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was sufficiently served on the landlords by mailing by registered mail on September 22, 2017. With respect to each of the Tenants' claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated September August 28, 2017?
- b. An order for emergency repairs?
- c. An order that the landlord comply with Act, regulations and/or tenancy agreement?
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenants have lived on the rental property since March 2014. The previous owner passed away and the property was sold to the respondents. The tenancy with these landlords started in August 2015. The rent was \$800 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$400 on September 1, 2015.

The tenant alleges they have a 10 year lease with the landlord which prevents the landlord from ending the tenancy under section 49. The landlord deny they ever agreed to a lease of that length.

The parties have been involved working together in a couple of business ventures over the last two years that have not been successful. The tenant testified they have done a large amount of work on the property which they would not have done unless they have a longer term lease. The landlord responded saying much of the work was done by the Tenant on his own as part of their business ventures.

Grounds for Termination:

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

Landlords Evidence:

The landlords gave the following evidence:

- They live in the North Vancouver area. However, they have decided to start a business and the female landlord intends to live in the rental unit for the purpose of organizing contractors etc. in order to get the business off the ground.
- The business will be owned by the female landlord. The property is 10 acres and about 2/3 of the property is second growth forest which they intend to keep in its natural state. The landlords intend to create a cutting flower farm, a nut tree orchard, grow vegetables and have 10 sleeping cabins to accommodate tourists on a seasonal basis. There will be no running water or electricity in the cabins.
- This business cannot be operated with the assistance of the Tenant as he has a different vision of how the business should operate.
- In July 2017 the tenant BS contacted ES to tell her to withdraw the application for re-zoning because he had a better business idea and re-zoning was not necessary. When ES came to the property he suggested they use the property to grow marijuana.
- The Tenant suggested ES that that DA be removed from an owner on title.
- The landlord looked into the possibility that she live in a trailer on the property but they were told they would not be able to insure the property.
- The landlords deny they had an agreement with the Tenant for a 10 year lease. The landlords told the Tenant they were not prepared to enter into such a lease at the present time but they would be prepared to talk about it. The landlord produced a tenancy agreement dated August 30, 2015 that was e-mailed to the Tenant that was for a one year fixed term ending August 31, 2016. The landlords signed this document. The tenants have not. The tenancy agreement was attached to an e-mail from ES stating "It is only for one year but when we get together we can do up the longer one and the land."
- The landlords testified they met with the Tenants around the middle of September and went over the written tenancy agreement. The Tenants both

signed the agreement. They provided the Tenants with a copy of this agreement signed by all parties. The landlords testified they have not been able to find this agreement as it appears to be misplaced.

- ES testified that the landlords were not prepared to enter into a 10 year lease. The purchase of the property involved a significant financial risk for them. They were not prepared to commit to such a lengthy fixed term as they might have to sell the property earlier than they hoped. They had received legal advice and advice from friends that a long term lease was not in their best interest.
- The Tenants have been having marital problems and the female tenant moved out of the rental unit and lived on a bus located on the property. This conflicted with bylaws and she was required to move the bus.
- The landlord testified effort to remove rubbish and conduct the extensive clean up of the property was the joint and separate business interest of the Tenants. This landlord submits this is separate from the lease.
- The landlords testified the marital differences between the Tenants caused a great deal of stress and they felt considerable empathy for the female tenant. ES testified she does not feel safe on the property because of the conduct of BS.

Tenants Evidence:

- The tenant acknowledges receiving a copy of the written tenancy agreement that had been signed by the landlords at the end of August 2015 by e-mail. However, he testified they meant with the landlords during the middle of September and they signed the form of tenancy agreement after changing the term for one year to 10 years as well as adding additional terms. He testified that when problems occurred he attempted to locate his copy at his place but was not able to find it. He now believes the landlord never provided him with a copy. He stated the term was for 10 years.
- The tenants produced a copy of a letter dated August 22, 2015 addressed To Whom It May Concern stating they (the landlords will be leasing to the Tenants, the caretakers of the property for the previous 18 months, for a period of 10 years, with possibilities for extension of the lease beyond the initial 10 years. This document was given to assist the Tenant to obtain Citizenship. The landlords were responding to a request made by the Tenants. The tenant does not rely on this document as evidence of the 10 year fixed term.
- The Tenants referred to a letter signed by JW which is undated where he states that BS told him the landlords had agreed to a 10 year lease.
- BS testified that on July 28, 2017 DA attended the property in the absence of ES with several underage you girls. He told DA this was inappropriate.

Analysis:

After carefully considering all of the evidence I determined the Tenants failed to prove the parties entered into a 10 year fixed term for the following reasons:

- The tenants failed to present evidence to establish there was a 10 year fixed term agreement. Both parties acknowledged signing a tenancy agreement around the middle of September that set out their rights and obligations. Neither party could produce a copy of that agreement.
- The explanation of the landlord as to why they were not prepared to enter into such a long term tenancy agreement was reasonable and is consistent with the surrounding evidence. This venture involved financial risk to them and they did not want to limit their options in case they had to re-sell. While the evidence indicates the landlord might be prepared to enter into a lease longer than a one year fixed term, there is insufficient evidence to establish they were prepared to agree to a 10 year fixed term.
- The tenant stated he would not have done the extensive clean up work unless he had a long term lease. The landlord's testimony that the tenant's work effort was motivated by their joint and his individual business interests is equally plausible.
- A 10 years fixed term is long for an unusual length of time for a residential tenancy agreement.
- The letter from JW that BS told him he had entered into a 10 year lease is not helpful. It is not evidence of an agreement between the parties.
- The written tenancy agreement e-mailed to the tenants by the landlord at the end of August 2015 provides for a one year fixed term becoming month to month after that. The parties agree a tenancy agreement was signed in the middle of September but they disagree as to the length of the term. Neither party was able to produce a copy of that agreement I determined that there is insufficient evidence for me to determine that the agreement was for a fixed term of 10 years as the Tenant alleged or for a fixed term of one year becoming month to month after that as the landlord alleges. As a result I determine the term of the tenancy defaults to a month to month tenancy.
- The tenant referred to the following cases:
 - Johnson v Patry, 2014 BCSC 540
 - Vancouver Canucks Limited Partnership v. Canon Canada Inc. 2015 BCCA 144
 - Calvin Consolidated Oil & Gas v. Manning [1959] SCR 255.
- The cases were of little assistance in deciding this case.

The Law::

Section 49(2) and (3) of the Residential Tenancy Act provides as follows:

49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the **landlord intends in good faith to occupy the rental unit. (my emphasis)**

Policy Guideline 2 includes the following:

“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.” (my emphasis)

After carefully considering all of the evidence I determined the landlords failed to establish a good faith intention to end the tenancy for the following reasons:

- The good faith intent of the landlords has been called into question. Thus the landlords have the burden of proof to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.
- The landlord submitted that the relationship between the parties involves not only a landlord-tenant relationship but a business relationship. He submits the major reason the tenant did the clean up work was motivated by the business relationship and that I should separate the two relationships.
- I accept the landlords submission that I should separate the two relationships as the proposed business of the landlord do not involve an extensive use of the rental property.
- The evidence indicates there was a falling out between the tenant BS and the landlord related to the business possibilities and personality conflicts. The landlord's written submission states he has shown a "different vision to how the business should operate." Further the landlord gave evidence they were empathetic with the female tenants position in the marital breakup. I determined one of the reasons the landlord wishes to end the tenancy is because of a falling out between the landlord and the male Tenant due to business and personal differences.
- The landlords failed to prove they have a good faith intention to move into the rental unit. They intend to continue to live in their home in North Vancouver.
- The female landlord testified she intends to live in the rental unit on a part time basis in order to organize and oversee the development of their new business plan. The landlords failed to present sufficient evidence that it was necessary to

end the tenancy in order for them to carry out the development of their proposed business venture.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlords failed to establish a good faith intention to end the tenancy. As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the application for emergency repairs as the tenant failed to provide sufficient evidence that such a claim is established. I dismissed the application for a Tenants Order of Possession as the tenant is already in possession.

As the tenants have been successful I ordered that the landlords pay to the Tenants the sum of \$100 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: December 21, 2017

Residential Tenancy Branch