



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT
CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants, both seeking orders cancelling notices to end the tenancies for landlord's use of property; orders that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fees from the landlord for the cost of the applications.

One of the applications was before me on July 27, 2023 and I adjourned the hearing to July 28, 2023, by consent, to be heard with the other matter which had been scheduled for July 28, 2023; the applications are joined to be heard together because they relate to the same rental address and are rented by family members. My Interim Decision was provided to the parties on July 27, 2023, and I ordered that the tenants provide a translator for the July 28, 2023 hearing.

On July 28, 2023 the landlord attended the hearing accompanied by an agent. Three tenants also attended, one of whom was affirmed to well and truly interpret the proceedings from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of the interpreter's skill and ability.

The landlord and the landlord's agent each gave affirmed testimony. One of the named tenants also gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The landlord has not provided any evidentiary material, and the tenants have provided copies of the Notices to end the tenancies, which have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notices to End Tenancy For Landlord's Use of Property dated March 6, 2023 were issued in accordance with the *Residential Tenancy Act*, and in good faith?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to rent increases?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2021 and reverted to a month-to-month tenancy after March 31, 2022 and the tenants still reside in the rental units. The rental units are the upper and lower units in a house, and the landlord does not reside on the property. A tenancy agreement exists, however a copy has not been provided for this hearing. Rent in the amount of \$2,000.00 for the upper level was increased to \$2,030.00 effective July 1, 2023; and rent for the lower level was \$1,600.00 which was increased to \$1,624.00 effective July 1, 2023. Security deposits of \$1,000.00 and \$800.00, respectively were collected by the landlord at the beginning of the tenancies.

The landlord's agent further testified that a Two Month Notice to End Tenancy For Landlord's Use of Property was served to the upper level tenants on March 6, 2023 in person to one of the tenants and a copy by email to another tenant. A copy of the Notice has been provided by the tenants for this hearing and it is dated March 6, 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.

On March 6, 2023 the tenants in the lower level were served with another Two Month Notice to End Tenancy For Landlord's Use of Property by handing it to one of the tenants and to another by email. A copy of the Notice has been provided by the tenants for this hearing. It is dated March 6, 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's agent testified that the landlord has kids, and is separating from the landlord's spouse, the landlord is getting kicked out of his house, and the landlord has to move into the rental unit.

The landlord testified that his parents will live downstairs, and the landlord will live upstairs because he has separated with his wife. The landlord and his parents are now staying at his brother's house.

The tenant (AA) testified that it's hard to move right now, and if required to move, the tenant will not be able to find a house near school or work. The tenant has tried, but cannot find anything now; it's expensive.

When the landlord came, he asked for both suites, upstairs and downstairs. Then on or about April 15 or 16 the landlord asked if he could increase the rent to \$2,030.00 for the upper suite and \$1,630.00 for the lower suite to \$4,800.00 in total, being an increase of \$1,146.00. The tenants agreed to some increase, but not that much.

The tenant further testified that the roof leaks and there is water damage inside, including on furniture. The washrooms also need repairs. The tenants asked the landlord to make repairs, and the landlord said the tenants had to sign a new tenancy agreement first, and then the landlord would do so, but refused to make repairs prior to that new tenancy agreement. Two weeks ago, the landlord asked the tenants to sign a tenancy agreement with an increase of \$1,200.00, but the tenants did not sign, awaiting this hearing. The tenants agreed to the increase of \$1,200.00 but asked that repairs be done. The landlord did not ask to increase the rent, but said he would increase it to \$5,500.00 or he would move in. The final amount to increase was \$1,200.00, which was agreed.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agent disagrees with the dates set out by the tenant. There were a lot of negotiations and the landlord tried to work with the tenants, and they asked the landlord to find another solution, and that's where the rent increase came up. The landlord did not approach the tenants about an increase; the tenants bug the landlord and landlord's agent all the time, and want to stay. The landlord is aware of the compensation requirements under the *Act*, and doesn't want to pay 12 times the rent. Rent for May to July has not been paid. The landlord's intent is to be good and faithful, and believed the parties could work it out. The landlord wants the suites back for personal reasons.

SUBMISSIONS OF THE TENANTS:

None

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. I have reviewed both Notices, and I find that they are in the approved form and contain information required by the *Act*. Good faith intent is at issue.

Firstly, I note that both of the Notices indicate that the landlord will occupy both rental units, however the landlord testified that his parents will reside in the lower level. That is not indicated in the Notice, and there is a place to identify that in the form. If the landlord failed to occupy the lower level, the landlord would not be acting in good faith.

I accept the testimony of the landlord and the landlord's agent that the landlord has separated from his spouse and is currently residing with his brother, along with his parents.

As a result, I am satisfied that the landlord is acting in good faith with respect to the upper level, but not in the lower level because the landlord has testified that his parents will reside in the lower level, not the landlord or the landlord's spouse.

Therefore, I cancel the Two Month Notice to End Tenancy For Landlord's Use of Property for the lower level suite, and I dismiss the tenants' application with respect to the upper suite.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that both Notices are in the approved form, I grant an order of possession in favour of the landlord for the upper suite only. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenants.

With respect to the tenants' applications for an order that the landlord comply with the *Act* or the tenancy agreement, the parties agree that there have been numerous conversations regarding settling these disputes, which include increasing rent. A landlord may only increase rent annually and in the amount set out by the regulations, and I order the landlord to comply with respect to the lower level suite.

Since the tenants in the lower level 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 as against the landlord in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may serve the landlord with the order 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 Two Month Notice to End Tenancy For Landlord's Use of Property dated March 6, 2023 issued to the lower level suite is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to comply with the *Residential Tenancy Act* and regulations with respect to increases in rent with respect to the lower level suite.

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

The tenants' application for the upper level suite is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord for the upper level suite only effective on 2 days notice to the tenants.

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 02, 2023

Residential Tenancy Branch