



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 26, 2018 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 20, 2018 (the “Notice”) and for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing with the Law Student. The Landlords appeared at the hearing.

The Property Manager provided the correct spelling of his last name and I amended the Application to reflect this. This is also reflected in the style of cause.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the Tenant at the outset that I would not consider the request for compensation for monetary loss or other money owed as this issue is not sufficiently related to the dispute of the Notice which was the main issue before me. I dismiss this aspect of the Application with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlords provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all relevant documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between Landlord H.P. and the Tenant in relation to the rental unit. The agreement started January 1, 2018 and is for a fixed term ending December 31, 2018.

The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by Landlord H.P. It has an effective date of December 31, 2018. The grounds for the Notice are that the “rental unit will be occupied by the landlord or the landlord’s close family member”.

The Property Manager testified that he sent the Notice to the Tenant by registered mail on August 20, 2018. The Tenant acknowledged receiving the Notice August 21, 2018 by registered mail.

In relation to the grounds for the Notice, Landlord H.P. testified that he wants to move into the rental unit at the end of the fixed term tenancy. This is the only explanation Landlord H.P. originally provided. I asked Landlord H.P. for further information and he referred to his mother-in-law moving back and said he decided to move. He then referred to the reason being the family situation.

I asked Landlord H.P. to provide further information about the situation with his mother-in-law. He testified that his mother-in-law came back and moved into his house and he now must move back to the rental unit. I asked Landlord H.P. why he did not provide evidence to support his position. He said he did not know he needed to.

The Tenant testified as follows in response to questions from the Law Student. Around April of this year, she received a message from the Property Manager about Landlord H.P. receiving complaints from her neighbours about smoking on the property and advising that Landlord H.P. wanted the Tenant to move out. She told the Property Manager that Landlord H.P. could not evict her because the tenancy was a fixed term tenancy.

The Tenant further testified as follows. She subsequently received a call from the Property Manager saying that Landlord H.P. wanted to sell the rental unit and that Landlord H.P. wanted her out before he listed it as it would be an inconvenience for her to be there while it was being shown to potential buyers. She told the Property Manager she would not vacate the rental unit.

The Tenant testified about further correspondence with the Property Manager in which he told her everything would be fine if the neighbours were not complaining about the smoking. She said the Property Manager told her Landlord H.P. wanted her out of the rental unit because of the complaints and that he was going to list the rental unit for sale. She said the Property Manager told her he was going to meet with Landlord H.P. in relation to this. The Tenant testified that next she received a text and email from the Property Manager saying Landlord H.P. decided he is going to move into the rental unit.

The Tenant testified that the requests for her to vacate the rental unit for the various reasons occurred within three to five months prior to Landlord H.P. serving her with the Notice. She said it was only a couple of weeks between Landlord H.P. saying he was going to list the rental unit for sale and saying he was going to move into the rental unit.

The Tenant pointed out that the Notice is the third attempt at getting her to vacate the rental unit. She said she believes Landlord H.P. wants her to vacate so that he can re-rent the unit at a higher rent as she has made improvements to the rental unit. She submitted that Landlord H.P. is using whatever means he can to get her out of the rental unit. She said Landlord H.P. also offered her money to leave.

The Property Manager agreed that the Tenant's outline of events occurred and agreed with the timeline as stated by the Tenant.

I asked Landlord H.P. what changed between his plan to list the rental unit for sale and his plan to move into the rental unit. He said things changed and that his family situation changed.

I asked the Landlords if they submitted any evidence in support of their position on this issue. The only evidence the Landlords pointed to was a signed letter written by Landlord H.P. stating he will occupy the rental unit once it is vacant.

The Tenant submitted a number of text messages between her and the Property Manager. I note that one of the texts refers to the neighbours' complaints being the issue. I do not find any of the other evidence relevant to the issue before me.

Analysis

The Notice was served on the Tenant in August and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(3) of the *Act*. The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept the undisputed testimony of the Tenant that she received the Notice on August 21, 2018. Based on our records, I find the Tenant filed the Application August 26, 2018, within the 15-day time limit set out in the *Act*.

Section 49(3) of the *Act* states:

(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.

Pursuant to rule 6.6 of the Rules, the Landlords have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2 deals with the good faith requirement referenced in section 49(3) of the *Act* and states in part:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found 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 tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

...

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

Landlord H.P. testified that he intends to move into the rental unit at the end of the fixed term tenancy. The Tenant disputed this and took the position that Landlord H.P. is not acting in good faith in issuing the Notice.

I accept that the Landlords asked the Tenant to vacate the rental unit for two different reasons prior to issuing the Notice and that she refused. I also accept that this occurred within three to five months prior to the Notice being issued. The Property Manager agreed with the Tenant's testimony in this regard. I find that this raises the question of whether the Notice was issued in good faith.

It falls to the Landlords to prove that the Notice was issued in good faith. I am not satisfied based on the evidence provided that the Landlords have proven the Notice was issued in good faith and that Landlord H.P. intends to move into the rental unit.

I did not find the testimony of Landlord H.P. in relation to the grounds for the Notice compelling. When asked for his submissions in relation to the grounds for the Notice, Landlord H.P. stated that he wants to move into the rental unit at the end of the fixed term tenancy. He provided no details or explanation in relation to his plan to move into the rental unit. It was not until I asked Landlord H.P. for further information that he provided any further explanation. Even then, Landlord H.P. provided very little detail or explanation in relation to his current living situation or plan to move into the rental unit.

Further, the Landlords provided no evidence that supports Landlord H.P.'s position. For example, the Landlords provided nothing from Landlord H.P.'s mother-in-law to support that she recently moved in with him or to address their present living situation. When asked about this lack of evidence, Landlord H.P. said he did not know that he needed to provide evidence. This is not a sufficient or compelling explanation. The Rules and Policy Guideline 2 clearly state that the Landlords have the onus to prove the Notice. The Landlords are expected to know their obligations in this regard.

Here, there is evidence before me that calls into question the good faith of Landlord H.P. in issuing the Notice. The testimony of Landlord H.P. in relation to the grounds for the Notice was not compelling. No evidence was provided to support Landlord H.P.'s position. In the circumstances, the Landlords have failed to satisfy me that the Notice was issued in good faith. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 31, 2018

Residential Tenancy Branch