



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use (Two Month Notice) pursuant to section 47 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent S.J., who is the landlord's son, primarily spoke on behalf of the landlord.

As both parties were present, service of documents was confirmed. The tenant testified that he served the landlord with the Notice of Dispute Resolution Proceeding package and his evidence for this hearing by Canada Post registered mail on July 10, 2018, which was confirmed by the landlord's agent. The landlord's agent testified that they served their evidence on the tenant on August 24, 2018, which was confirmed by the tenant. Based on the undisputed testimonies of the parties, I find that the tenant's application for this hearing was served in accordance with section 89 of the *Act*.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person

making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the cost of this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Both parties agreed to the following facts regarding the tenancy agreement:

- The landlord purchased the rental property in December 2017 and assumed this existing tenancy.
- A written tenancy agreement was signed by the tenant and the previous landlord and a copy was submitted for this application.
- This tenancy began on January 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant to the previous landlord, which is now held by the current landlord.

The rental property consists of a house with two rental units. The rental unit which is the subject of this dispute is located on the main floor of the house and also includes living space in the basement. The rental unit has five bedrooms and two and a half bathrooms. The other rental unit in the property is a separate self-contained one-bedroom suite in the basement.

The tenant submitted into evidence a copy of the Two Month Notice which the landlord served on July 1, 2018 to the tenant's adult son, who resides at the rental unit.

The Two Month Notice stated the following reasons for the issuance of the notice:

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).

The notice is signed and dated by the landlord on July 1, 2018, provides the address of the rental unit, states an effective vacancy date of August 30, 2018, and is on a Residential Tenancy Branch approved form.

I note that since the tenant pays rent on the first of the month, and the notice is dated on the first of the month, and was served to the tenant on the first of the month, the stated effective vacancy date of the notice is incorrect and should be September 30, 2018.

On July 10, 2018, the tenant filed an application for dispute resolution to dispute the good faith intention of the landlord to use the rental unit for purpose stated on the Two Month Notice.

Both parties confirmed that the landlord initially tried to renegotiate a new tenancy agreement with the tenant shortly after purchasing the property and assuming the tenancy.

The tenant testified that starting in January 2018, the landlord tried to increase his rent beyond the allowable rent increase provided by the Act. As well, the tenant stated that his original written tenancy agreement required him to pay electricity, gas and water, however, he claimed that he had negotiated with the previous landlord to pay the electricity and gas for the whole rental property – including the services used by the one-bedroom basement suite – in exchange for the landlord paying the whole water bill.

The tenant testified that the current landlord, who is the respondent in this dispute, had tried to negotiate a term requiring the tenant to pay all the utilities for the whole rental property or pay a significantly higher rent. In support of his testimony, the tenant submitted into documentary evidence a number of text message exchanges between the tenant and the landlord's son over the course of January to May 2018, discussing the terms of a renegotiated tenancy agreement.

Both parties also confirmed that the landlord served the tenant with a prior notice to vacate in the form of a letter, dated May 20, 2018, which stated as follows:

You are hereby notified to vacate the premises listed above by July 1, 2018. The reason being we will be moving in soon. So I would like you to vacate by above stated date.

The tenant advised the landlord that the letter notice was not a proper notice to end tenancy and the tenant refused to accept it. The landlord later prepared and served the July 1, 2018 Two Month Notice, which is the subject of this dispute.

The landlord's son, who acts as the landlord's agent, testified that the landlord purchased the rental property on December 20, 2017, and assumed the existing tenancy, with the intent of keeping the property rented as an investment property. As such, the landlord never asked the prior owner to issue a notice to end tenancy to the tenant when the property changed hands. At the time the landlord purchased the rental property, the landlord was living in Northern B.C. where he ran a business and resided with his family.

The landlord's son testified that he has been living in the Metro Vancouver area with his aunt since 2016 as he pursues post-secondary studies. The landlord's agent testified that the landlord sold his business and on July 28, 2018 moved with the rest of the family to Metro Vancouver where they are currently renting a two-bedroom basement suite while they wait to gain possession of the rental unit.

The landlord's agent stated that his younger brother has finished school and will now be pursuing post-secondary studies in the Metro Vancouver area. He testified that as both of the landlord's sons would now be studying in the Metro Vancouver area, this was one of the reasons the family decided to move. He stated that the landlord is currently looking for work in the Metro Vancouver area. As the family is paying a mortgage on the rental property and paying \$1,000.00 per month in rent for their temporary accommodations, the landlord's agent expressed that they are facing significant financial challenges.

In support of their claim that they intend, in good faith, to reside in the rental unit, the landlord submitted into evidence a copy of their current month-to-month tenancy agreement for their temporary accommodations, which began on July 28, 2018; receipts for a moving truck rental; and a receipt for a storage unit.

The landlord also submitted into evidence a written statement summarizing their reasons for ending the tenancy. In this submission, the landlord stated that the landlord's wife had discussed with the tenant's wife in January 2018 about the possibility of the landlord's family moving into the rental home in July 2018. The submission confirms the landlord's discussions with the tenant regarding payment of the water bill, rent increase and renegotiation of the tenancy agreement. However, the landlord's version of events portrays the tenant as being "really stubborn", not being willing to discuss issues with the landlord, and taking action on his own initiative to have the appliances fixed and deducting the amount from rent without permission.

Analysis

Section 49(3) of the *Act*, as noted below, allows a landlord to end a tenancy for their own use:

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 added)

As the notice was issued under section 49(3) of the *Act*, the tenant had 15 days to dispute the notice pursuant to section 49(8)(a) of the *Act*. There is no issue that the tenant filed the Application within the 15-day time limit set out in the *Act*.

Residential Tenancy Policy Guideline #2 - Ending a Tenancy: Landlord's Use of Property explains the 'good faith' requirement in section 49(3) of the *Act* and states in part at page two to three:

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.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of (for RTA section 49 (3) or section 49 (4));

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

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.

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the landlord has the onus to prove the grounds for the Two Month Notice.

In this case, the landlord has provided minimal evidence to prove that he and his family intend to reside in the rental unit. The landlord did not provide any documentary evidence, such as real estate sales documents, nor any testimony, to indicate that they have sold their prior residence. Although testimony was provided that the landlord sold his business in Northern B.C., no documentary evidence was submitted to support this testimony. The landlord submitted into evidence a copy of the tenancy agreement for his current temporary

accommodation, but did not call on his current landlord, or any other third party to provide testimony to confirm that he is residing in the temporary accommodation awaiting to move into the rental unit.

Further to this, the landlord's son testified that the landlord originally purchased the property in December 2017 with the intention of keeping it as an investment property, which is why they did not ask the prior owner of the property to issue the tenant with a Two Month Notice to End Tenancy. However, in the landlord's written submission, he stated that his wife spoke with the tenant's wife in January 2018 about the possibility of the landlord moving into the rental unit in July 2018. I find the verbal testimony provided at the hearing to conflict with the landlord's written submission. Further to this, during the months from January to May 2018, the landlord attempted to renegotiate the tenancy agreement with the tenant, however by May 20, 2018, the landlord issued an "Eviction Notice" to the tenant when these attempts to renegotiate the agreement failed. I find that the landlord did not provide sufficient explanation as to why he changed his decision from keeping the property as an investment to making it his home over the course of only a few months.

I find that the lack of documentary evidence submitted by the landlord to support their testimony that they have relocated from their prior residence with the intention to reside in the rental unit, in conjunction with the landlord's failed attempts to renegotiate the tenancy agreement with the tenant, which appear to have led to the landlord issuing the tenant with a notice to vacate the property, lend sufficient support to the tenant's claim that the landlord has not issued the Two Month Notice in good faith.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has not provided sufficient evidence to establish that he that he intends in good faith to do what he said on the Two Month Notice and to establish that he does not have another purpose or an ulterior motive for ending the tenancy.

As such, the landlord's Two Month Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The tenant's application to cancel the Two Month Notice is granted. The landlord's Two Month Notice is cancelled and of no force or effect. Therefore, this tenancy shall continue until it is ended in accordance with the *Act*.

I order the tenant to withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee for this application.

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: September 19, 2018

Residential Tenancy Branch