



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

On October 12, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property, and to order the Landlord to comply with the Act. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing, the Tenant clarified that he applied for the Landlord to comply with the Act as part of his claim that the Notice should be cancelled. The Tenant acknowledged that there wasn’t another reason for the Landlord to comply with the Act other than to comply with the verbal agreement regarding the fixed term of the tenancy and to issue Notices in good faith. These issues were brought up during the claim to cancel the Notice and therefore, in accordance with Section 64(3) of the Act, I have amended the Tenant’s Application by removing his request to order the Landlord to comply with the Act.

While discussing the exchange of evidence between parties, the Tenant argued that the Landlord's evidence should not be admitted as it was not served prior to fourteen days before the hearing. The Tenant testified that he received the Landlord's evidence package six or seven days before the hearing. I reviewed the Rules of Procedure with the Tenant and found that the Landlord's evidence was served in accordance with the Rules of Procedure and the evidence was admitted.

During the hearing, the Landlord referred to the submitted Tenancy Agreement and the Tenant later stated that he did not receive the Tenancy Agreement as part of the Landlord's evidence package. The Landlord stated that he included pictures of the Tenancy Agreement in his evidence package. I find that the copy of the Tenancy Agreement that the Landlord submitted was admissible as it did not prejudice the Tenant as the Tenant agreed, as noted in Background and Evidence, that he signed the Tenancy Agreement with the terms as noted by the Landlord.

Issues to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated October 5, 2018 (the "Notice") be cancelled, in accordance with Section 49 of the Act?

If the Notice is upheld, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

Landlord's evidence:

The Landlord submitted a Tenancy Agreement and testified that the tenancy began on May 1, 2013. The one-year fixed term tenancy continued on as a month-to-month tenancy after April 30, 2014. The monthly rent of \$400.00 is payable on the first of each month. The Landlord did not collect a security deposit. The Tenancy Agreement showed that both parties signed on May 1, 2013.

The Landlord stated that his son, who currently lives with him, plans to move into the rental unit. As a result, the Landlord issued the Tenant the Notice by personally serving it to the Tenant on October 5, 2018. The Notice included a move-out date of December

6, 2018. The reasons for the Notice stated that the rental unit will be occupied by the Landlord or the Landlord's close family member, specifically, his child/son.

The Landlord testified that his son doesn't want to live with him anymore and that he is not planning to find new tenants for the rental unit.

The Landlord stated that he did not make a verbal agreement with the Tenant for a 10-year fixed term tenancy and that he was not interested in accepting the Tenant's proposal for more rent as he requires the rental unit for his son.

Tenant's Evidence:

The Tenant testified that the tenancy began on April 1, 2013 and that the Landlord presented the Tenancy Agreement to him after the tenancy had begun. The Tenant stated that he established a verbal agreement with the Landlord in March 2013, when the Tenant was viewing the rental unit. The Tenant said he negotiated with the Landlord to lower the rent from \$550.00 a month to \$400.00 if the Tenant promised to be a long-term tenant. The Tenant stated that he would stay in the rental unit for at least ten years and said that the Landlord agreed and shook the Tenant's hand.

The Tenant presented a letter from his mother, dated October 17, 2018, stating that she was present during the verbal agreement for the long-term tenancy between the Tenant and the Landlord. The letter indicated that the Landlord said, "you can stay as long as you like" and that the Landlord wouldn't evict the Tenant based on one of his family members moving in.

The Tenant acknowledged that he signed a Tenancy Agreement with the Landlord for a one-year fixed term tenancy that would continue on as a month-to-month tenancy.

The Tenant stated that there are several separate rental units in the residential property in which he lives and which the Landlord owns. The Tenant stated that he spoke with a previous tenant/neighbour who recently moved out of the residential property. This previous tenant stated that the Landlord did not allow a former roommate of his (the previous tenant's) to continue the original rental agreement as the Landlord said that his son was going to move into the rental unit. The Tenant stated that the Landlord's son did not move into the neighbouring rental unit and that it is currently rented out to new tenants. The Tenant submitted a handwritten note, dated October 24, 2018, with the

above information and stated that the previous tenant/neighbour agreed to the content and signed the note.

The Tenant stated that the Notice should be cancelled as there is a verbal agreement for the tenancy to continue for ten years and secondly, that the Landlord issued the Notice in bad faith. Specifically, that the Landlord has claimed to other tenants that his son was going to move into the rental units and has not followed through.

Analysis

Where a Tenant applies to dispute a Two Month Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Two Month Notice is based.

The Landlord stated that his son intends to move into the rental unit. The Landlord did not present his son as a witness during the hearing.

The Tenant testified that the Landlord's issuance of the Notice was in bad faith as the Landlord has used the same reason for not continuing other tenancies. The Tenant stated that the Landlord's son has not followed through with moving into any of the rental units.

The *Residential Tenancy Policy Guidelines #2* (the "Guidelines") discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

As the Landlord's "good faith" was questioned regarding the issuance of the Notice, I considered that the only submission that the Landlord provided, was his own testimony that his son was going to move in. I find that the Landlord could have provided further evidence to prove, beyond a balance of probabilities, that his son, in good faith, was intending to move into the rental unit, in accordance with Section 49 and 51 of the Act.

As such, I find that the Landlord has failed to provide sufficient evidence that the reasons for the issuance of the Notice were valid. As a result, I cancel the Notice and order the tenancy to continue until it is ended in accordance with the Act.

Conclusion

The Two-Month Notice to End Tenancy for Landlord's Use of Property, dated October 5, 2018 is cancelled and the tenancy shall continue until it is 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 *Residential Tenancy Act*.

Dated: November 23, 2018

Residential Tenancy Branch