



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 02, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 26, 2021 (the “Notice”);
- For an order that the Landlord make repairs;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing with the Co-tenant. The Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the parties I would deal with the dispute of the Notice and dismiss the requests for an order that the Landlord make repairs and an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. These requests are not sufficiently related to the dispute of the Notice and are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

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

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and 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?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 01, 2018 and was for a fixed term ending March 01, 2020 then became a month-to-month tenancy. Rent is \$2,250.00 per month due on the first day of each month. The agreement is signed by the Landlord and Tenant. Both parties agreed the Co-tenant is also a tenant under the tenancy agreement.

The Notice was submitted as evidence. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Notice indicates the child of the Landlord or Landlord's spouse will occupy the rental unit.

Both parties agreed the first two pages of the Notice were served on the Tenant June 26, 2020 and received the same date. The Landlord acknowledged only serving the first two pages of the Notice. The Tenant raised an issue with only receiving two pages of the Notice and the validity of the Notice given this.

In relation to the grounds for the Notice, the Landlord testified as follows. He would like to move back to his house. He currently lives in another part of the province. His son graduated high school. He and his son are moving back to the rental unit city. His daughter lives in the area of the rental unit city. He wants to be with his kids. He fully intends in good faith to move back. He owns the house he is currently residing in.

The Tenant provided the following testimony and submissions. The tenants never had any idea the Landlord was planning to move back to the rental unit. The Landlord told them the rental unit could be a permanent residence for them. It was not until the tenants insisted on the Landlord repairing mold and leaks in the rental unit and pushed

the Landlord on this that the Landlord issued the Notice. The tenants have been requesting repairs from the start of the tenancy on an ongoing basis by text, email, over the phone and in person. The Landlord has failed to address the mold issue in the rental unit and most of the other issues raised.

In reply, the Landlord testified as follows. He has submitted a handwritten document showing repair requests and when repairs were completed. He has dealt with repairs every time they have been requested. He has received around seven repair requests from the tenants and he dealt with them all. He has a report that says there is no mold in the rental unit.

The Tenant submitted numerous documents as evidence. All of the Tenant's evidence relates to repair issues in the rental unit.

The Landlord submitted evidence that all relates to repairs or rent payments.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act*. The Tenant had 15 days from receipt of the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Based on the testimony of both parties, I am satisfied the Tenant received the Notice June 26, 2020. The Application was filed July 02, 2020, within the time limit.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities.

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.

Policy Guideline 2A deals with ending a tenancy for landlord's use and states in part:

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

Section 49(7) of the *Act* requires a notice issued pursuant to section 49 of the *Act* to comply with section 52 of the *Act* which states:

52 In order to be effective, a notice to end a tenancy must be in writing and must...

(e) when given by a landlord, be in the approved form.

I am not satisfied the Notice is valid for two reasons. First, I am not satisfied the Notice served on the Tenant complies with sections 52 and 49(7) of the *Act*. Second, I am not satisfied the Landlord intends in good faith to occupy the rental unit.

In relation to the form and content of the Notice, both parties agreed the Landlord only served the first two pages of the four page notice on the Tenant. The Landlord used the most current RTB form. The form specifically shows it is a four page form. Page four of the form states in bold:

This is page 4 of a 4-page Notice. The landlord must sign page one of this Notice and must give the tenant every page.

In my view, the requirement that a notice to end tenancy be in the approved form set out in section 52 of the *Act* means a notice to end tenancy issued by a landlord must be on the RTB form or an equivalent form that includes all of the information contained on the RTB form. The information contained on the RTB form is there for a reason. The information is included to inform tenants who receive the notice of their rights and obligations.

Here, the Landlord did not serve the Tenant with page two or three of the RTB form. I note that these are the pages that set out the good faith requirement and compensation requirements. I find the Landlord did not serve the Tenant with a notice in the approved form as the Landlord failed to serve the entire Notice. I do not find this to be a technicality given the importance of the information contained on pages two and three of

the form. I find the Landlord failed to comply with sections 52 and 49(7) of the *Act* as the Notice is not in the approved form.

Second, I am not satisfied the Landlord intends in good faith to occupy the rental unit. It is the Landlord that must prove he is acting in good faith. As outlined in Policy Guideline 2A, good faith requires honest intention with no ulterior motive. Good faith means, for example, that the Landlord is not trying to avoid obligations under the *Act*.

Here, the Tenant submits that the Landlord is trying to avoid his obligations in relation to repairing the rental unit. I am satisfied based on the documentary evidence submitted that there are issues between the parties in relation to repairs in the rental unit. I specifically note the email dated June 08, 2020 which clearly shows a disagreement between the parties about a window and mold in the rental unit. I find there is at least some evidence before me to support the Tenant's position.

However, and more importantly, there is a complete lack of evidence before me to support the Landlord's testimony about moving into the rental unit. The Landlord did not submit any documentary evidence to support any of his statements about moving into the rental unit or the circumstances surrounding it. Further, I did not find the Landlord's testimony to be particularly compelling given the lack of detail provided about his plans.

I find here that there is some documentary evidence before me to support the Tenant's position and no documentary evidence before me to support the Landlord's testimony. I do not find this to be a situation where the Landlord could not have provided documentary evidence. For example, the Landlord could have provided a witness statement from his son who he says intends to move into the rental unit with him. Given the lack of evidence to support the Landlord's testimony, I am not satisfied the Landlord has proven the grounds for the Notice.

Given the above, I cancel the Notice as I am not satisfied it complies with sections 52 and 49(7) of the *Act* and am not satisfied the Landlord intends in good faith to occupy the rental unit. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The Tenant can deduct \$100.00 from one future rent payment.

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: July 31, 2020

Residential Tenancy Branch