Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT LTD. (2001) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated June 28, 2020 ("2 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord GH" did not attend this hearing, which lasted approximately 70 minutes. Landlord BH ("owner"), landlord TH ("co-owner"), "landlord CH," landlord DL ("property manager"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The owner confirmed that he and the co-owner had permission to represent the third co-owner landlord named in this application, landlord GH (collectively "landlords"). Landlord CH did not testify at this hearing. The owner confirmed that his property manager had permission to represent the landlords at this hearing. The landlords' "witness IS" was excluded from the hearing and was not recalled by the landlords.

The owner confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence, except for the photographs. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence, except for the photographs. I did not consider the landlords' photographs at the hearing or my decision, since the tenant did not receive it and the owner said that I did not need to consider it.

The tenant confirmed receipt of the landlords' 2 Month Notice on June 29, 2020, by way of posting to her door. The property manager confirmed service using the above method on the above date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice on June 29, 2020.

Both parties confirmed that they were ready to proceed with the hearing and they had no objections. The owner noted issues with late service of documents from the tenant but confirmed the landlords received and reviewed them and were ready to proceed.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 for a fixed term ending on June 30, 2020. Monthly rent in the amount of $2,800.00 is payable on the first day of each month. A security deposit of $1,400.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The tenant continues to reside in the rental unit. The rental unit is a house.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective date on the notice is August 31, 2020. Both parties agreed that the landlords identified the following reason for seeking an end to this tenancy on page 2 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).*
- *Please indicate which family member will occupy the unit.*
    - *The landlord or the landlord's spouse.*

The owner testified regarding the following facts. The landlords issued the 2 Month Notice to the tenant because the co-owner intends, in good faith, to move into the rental unit with her husband, witness IS. The co-owner's youngest daughter is moving out of province for school, her admission paperwork was submitted, and the co-owner now has the freedom to move to a different city and live in the family home. The parents of the three owners built the rental property, it has been in the family for 70 years, it is a unique property in a desirable, rural location that is fully furnished. No tenants have ever lived in the rental unit, except for the tenant, as it has always been in the family. The three owners are all siblings and their parents have passed away. It was always the landlords' intention to move into the rental unit after the tenant's fixed term expired on June 30, 2020, since both parties signed on this area in the written tenancy agreement. The landlords provided emails to the tenant from June 4 and August 6, regarding this intention. The landlords left their family heirlooms in the rental unit because they intended to return. The landlords have had good relations with the tenant throughout her tenancy, they have not issued any previous notices to end tenancy to the tenant or had any previous RTB hearings with the tenant. The landlords offered the tenant half off her monthly rent for April 2020 due to the covid-19 pandemic, as per their emails from March 25 and 26, 2020. The landlords have replaced appliances and completed repairs for the tenant. They would not risk a twelve-month rent penalty under section 51 of the *Act* or a vacancy tax, for failing to live in the rental unit in good faith for at least 6 months.

The co-owner testified regarding the following facts. She currently lives in a different property in a different city with her three adult children. Her youngest daughter is moving out of province to attend school and her acceptance letter was submitted as evidence for this hearing. After the co-owner drops her daughter to school on September 1, 2020, she will return on September 7, 2020, and she intends, in good faith, to move into the rental unit with her husband, witness IS. The co-owner's two remaining children will stay at her current residence, which requires septic and other construction for a five to seven month period, which is currently on hold. A copy of a letter regarding the work to be done was supplied by the landlords. The co-owner has friends in the rental unit area, she has spent time there, she is a nurse pursuing an undergraduate degree in school, and she intends to reside there until at least next summer which is one year away.

The tenant stated the following facts. She disputes the landlords' 2 Month Notice. She thinks that the landlords only want to use the rental unit as a summer home for two months in July and August 2020, not for six months. The property manager sent her emails in May 2020, stating that the landlords were using the rental unit for the two

summer months, that she may be able to return after, the rules had changed, and the landlords did not need to live in the rental unit for six months, only state their intention to move in. The tenant provided copies of these emails. She had a good rapport with the landlords until she said that she could not move out due to financial issues, so now she thinks the landlords are upset and want her to leave, so she feels uncomfortable and no longer welcome at the rental unit.

The property manager stated that there was confusion in his emails from May 2020. He claimed that since the parties had a fixed term lease ending on June 30, 2020, the landlords only had to prove they were moving into the rental unit at the end of the fixed term. He claimed that the 2 Month Notice was issued by the landlords later in June 2020, which states that a six-month residency period was required. The email discussions regarding the tenant coming back to the rental unit after the summer was during the covid-19 period in May 2020, when the landlords could not issue a notice to end tenancy and were trying to assist the tenant. The owner claimed that the tenant was given extra time to move out, due to the covid-19 pandemic.

Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after she receives the notice. The tenant received the 2 Month Notice on June 29, 2020 and filed her application to dispute it on July 8, 2020. Therefore, the tenant is within the fifteen-day time limit under the *Act*. Accordingly, where the tenant applies to dispute the notice in time, the burden of proof is on the landlords to prove the reason on the notice, based on a balance of probabilities.

Section 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section “B. Good Faith:”

> *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)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case…

I accept the owner's and co-owner's testimony and written evidence that the co-owner landlord intends, in good faith, to move into the rental unit with her spouse, witness IS. I find that the landlords have no ulterior motive to end this tenancy. The owner and co-owner both provided affirmed testimony that the co-owner's daughter is moving out of province to attend school, the co-owner now has the freedom to move to a different city and live in the rental unit, which is a family home that has never been rented out except to the tenant. The landlords provided copies of the co-owner's daughter's admission to school and the work required on the co-owner's current home.

Both parties agreed that they had a good relationship throughout this tenancy, until discussions regarding the tenant moving out and the 2 Month Notice. The tenant did not dispute the owner's testimony that no previous RTB hearings occurred between them, nor were any other notices to end tenancy issued by the landlords to the tenant.

I find that the tenant was unable to show that the co-owner does not intend, in good faith, to move into the rental unit. While the tenant raised questions regarding the landlords' intentions as per their emails in May 2020, I find that these were prior to the 2 Month Notice being issued on June 29, 2020. These discussions also took place during the covid-19 pandemic when notices to end tenancy could not be issued by landlords for any reason, due to the state of emergency. I also note that since the written tenancy agreement indicated a fixed term end date of June 30, 2020, there was confusion in the property manager's emails regarding the landlords moving in and how long they were moving in for, since no 2 Month Notice had been issued to the tenant at that time.

Although the tenant is concerned about her financial situation during the covid-19 pandemic, this is not a relevant factor in determining the 2 Month Notice.

Based on a balance of probabilities and for the above reasons, I find that the co-owner, who is an owner and landlord of the rental property, along with her spouse, intends to move in to the rental unit in good faith to occupy it for at least a six-month period. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenant's application to cancel the 2 Month Notice, without leave to reapply. I uphold the landlords' 2 Month Notice, dated June 28, 2020.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the $100.00 filing fee from the landlords.

Pursuant to section 55 of the *Act*, I grant an **order of possession to the landlords effective at 1:00 p.m. on September 1, 2020**. The owner requested this September 1, 2020 date during the hearing. The owner confirmed that the tenant paid rent for August 2020 to the landlords. I find that the landlords' 2 Month Notice, dated June 28, 2020, complies with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlords effective at 1:00 p.m. on September 1, 2020.** The tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 13, 2020

Residential Tenancy Branch