



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

On August 19, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”).

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing. The Tenant was assisted by legal counsel.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have 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.

Issues to be Decided

- Does the Landlord have a good faith intention to end the tenancy to allow a close family member to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began back in 2005 and is currently on a month to month basis. Rent in the amount of \$820.00 is due to be paid to the Landlord each month. The rental unit is in a duplex property that contains two rental units. The Landlord owns both sides of the duplex.

The Landlord issued the Two Month Notice to the Tenant. The reason for ending the tenancy cited within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The child of the Landlord.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is November 01, 2020.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on August 19, 2020, within the required time period.

The Landlord provided testimony on the reason to end the tenancy. The Landlord testified that his daughter is moving to town and she will be living in the rental unit with her boyfriend. In addition, the Landlord intends to stay at the unit on occasion when he comes to town to visit his mother who is living in an extended care facility.

The Landlord testified that his decision to end the tenancy is not related to any intention to re-rent the unit at a higher rent. The Landlord testified that he will not be charging any rent to his daughter. The Landlord testified that he does not want to use the rental unit as a rental unit any longer.

The Landlord testified that he has other rental units in town but has chosen to end this tenancy because he likes the location better.

In reply, the Tenant's counsel cross examined the Landlord and asked him a number of questions. The Landlord testified in response that he believes the current rent for the unit is lower than market rent. The Landlord confirmed that the occupant of the other side of the duplex offered to move out so that the Landlord could move there, and the Tenant could stay.

The Tenant's counsel suggested that the Landlord is ending this tenancy rather than the other occupant because rent is lower. Counsel submitted that the other occupant pays monthly rent of \$1,320.00. In reply, the Landlord agreed that rent was part of the reason, but not the only reason. The Landlord testified that his daughter likes the Tenant's unit better. The Landlord testified that he offered the Tenant the other rental

unit at the market rent; however, the Tenant has declined. The Landlord testified that the other rental suite has a refreshed bathroom; refinished cabinets; new carpets and drywall; new ceilings; and led lighting.

The Tenant wants the Landlord to honor the \$820.00 rent she is paying. The Tenant's counsel submitted that the Landlord has a financial motive because the other occupant offered to move out and the Landlord declined the offer.

The Tenant's counsel submitted that in June 2013 the Landlord incorrectly attempted to raise the monthly rent from \$700.00 to \$900.00. Counsel submitted that the proper process was for the Landlord to apply for an additional rent increase. The Tenant provided a copy of the Decision.

In reply, the Landlord testified that the rent increase matter went to a hearing and the parties reached an agreement.

The Tenant's counsel referred to the Residential Tenancy Branch Policy Guideline #2A which provides that the Landlord must issue a notice to end tenancy in good faith with no ulterior motive. Counsel suggests that the Landlord has a financial motive.

The Tenant testified that she has lived in the rental unit for 24 years. The Tenant testified that the Landlord could have regularly raised the rent but has only done so recently.

The Landlord again offered to rent the other side of the duplex unit to the Tenant.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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)).

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit.

The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse. I accept the Landlord's testimony that he intends for his daughter to move into the rental unit and I find that his daughter meets the definition of a close family member. I find that the Two Month Notice complies with section 49(3) of the Act.

I have turned my mind to whether or not there is sufficient evidence to establish that the Landlord intends to defraud or deceive the Tenant. The Landlord owns both of the rental units at the residential property. I find that a Two Month Notice issued under section 49(3) of the Act does not require a Landlord to offer a Tenant a new tenancy opportunity at the existing monthly rent. I find that the Landlord has the right to choose which rental unit he would like to occupy.

With respect to the submission regarding financial motive, I find that the Landlord's financial motive is not due to an intent to circumvent the Act to rent the unit at a higher monthly rent. The Landlord is not charging his daughter any rent, and he stated he has no intention to re-rent the unit. I find that the Landlord is choosing to end the tenancy for the duplex unit that pays him less monthly rent. The other rental unit has been updated/ renovated and receives a higher monthly rent. I find that the Landlord has the right to make the financial decision to end the tenancy of the unit paying lower rent, which will lessen the amount of lost rental revenue. For a Two Month Notice is issued under section 49(3) of the Act, there is no legal requirement that when a Landlord owns multiple units he must consider which Tenant is paying the most or least monthly rent.

With respect to counsel's submission that the Landlord has a financial motive because he attempted to illegally increase the rent in 2013; I have considered this suggestion and I assign very little weight to it. I find that the situation occurred seven years ago and was resolved in November 2013. The Tenant testified that over a 24-year period the Landlord could have raised the rent but only did so recently. Other than this one

isolated incident seven years ago, I find that the Tenant has not established that the Landlord's decision to end the tenancy is based on financial motivations or an attempt to avoid obligations under the Act. Based on the Tenant's testimony, it appears to me that the Tenant may have benefitted by paying less than market rent for many years.

Section 62 (4) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part. The Tenant provided a copy of court decisions including *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636 for consideration. I find that the *Baumann v. Aarti Investments Ltd* decision provided is related to an eviction notice for renovations or repair which relates to different provisions of the Act. I find the Decision is not relevant to the matter before me and I distinguish it on this basis.

I find that the Landlord has met his burden by establishing that he issued the Two Month Notice in good faith.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 7, 2020, is dismissed.

Under section 55 of the Act, when a tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Two Month Notice complies with the required form and content. The Landlord is entitled to an order of possession for the rental unit on the effective day of the Notice.

The Landlord is granted an order of possession at 1:00 p.m. on November 1, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 7, 2020, is not successful. The tenancy is ending.

The Landlord is granted an order of possession at 1:00 p.m. on November 1, 2020, after service on the Tenant.

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: October 14, 2020

Residential Tenancy Branch