



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On May 11, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with H.M. attending as her advocate. The Landlord attended the hearing with G.K., the co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

H.M. advised that the Landlord was served with the Notice of Hearing package by registered mail on May 21, 2021 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing package.

She then advised that the Tenant's evidence was placed in the Landlord's mailbox on June 14, 2021. The Landlord confirmed that he received this evidence on that date. Based on this undisputed testimony, as this evidence has been received in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served their evidence by placing it in the Tenant's mailbox on June 17, 2021, and the Tenant confirmed that she received this evidence. Based on this undisputed testimony, as this evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started sometime in 2014 and that the tenancy was currently a month-to-month tenancy. Rent was presently established at \$825.00 per month and was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

All parties also agreed that the Tenant was served the Notice by it being placed in her mailbox on April 26, 2021. The reason the Landlord served the Notice is because "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)." As well, the Landlord checked off the box that the rental unit will be occupied by "The landlord or the landlord's spouse." The effective end date of the tenancy was noted as June 30, 2021.

G.K. advised that they recently purchased the rental unit and only took possession of the property on November 30, 2020. She stated that she only worked one day a week at home prior to this. However, she moved to a new position on October 26, 2020 which required her to work from home full-time starting on November 23, 2020. This switch in her work arrangement was not anticipated when purchasing the property. However, this was one reason for service of the Notice as she required a third bedroom to maintain the confidentiality of her work. She referenced a letter, that was submitted as documentary evidence, from her employer to support this position.

The Landlord advised that another reason the Notice was served is because they were contemplating expanding their family. He referenced a letter sent to the Tenant with the Notice, that was submitted as documentary evidence, to support this position.

He also submitted that another reason they would like to occupy the space is because they anticipated being able to have guests and family visit again, as the provincial COVID-19 restrictions eased, and that they could use this additional space to accommodate them.

H.M. questioned the Landlord why they waited so long from when they took possession of the property to serve the Notice. The Landlord replied that the reason for this was because they did not have a sense of the space or the layout.

She then questioned the Landlord if he provided a proof of the rental income to qualify for the mortgage. The Landlord stated that he was not sure; however, they did report the rental income to qualify for the mortgage.

H.M. then questioned the Tenant what her relationship was like with the Landlord when they took possession of the property. The Tenant advised that the relationship was amicable, but she felt "forced" by the previous landlord to sign a new tenancy agreement as the Landlord required this document for financing purposes.

H.M. referenced emails from the Landlord to the Tenant, submitted as documentary evidence, in January 2021 regarding their dissatisfaction with how the Tenant was maintaining the yard, and they requested that the Tenant address these issues. The Tenant was able to address some of these issues, but she could not comply entirely due to the winter weather conditions. H.M. directed my attention to an email dated March 4, 2021 where the Landlord again followed up with a request to clean the yard. At the end of this email, the Landlord stated, "If the side yard is not cleared, organized, and up to health and sanitary standards by March 31, 2021, we are going to be looking into other ways of dealing with this issue." The Tenant advised that the once amicable relationship between the parties had deteriorated by that point.

H.M. cited Policy Guideline 2A to highlight that the Landlord must intend to occupy the rental unit in good faith and that the Landlord must prove that there is no ulterior motive for ending the tenancy. She submitted that the friction created by the yard issue is the true reason why the Landlord served this Notice, and this is emphasized by his statement that if the yard issue is not addressed, he will "be looking into other ways of dealing with this issue." Moreover, the Landlord's intention to expand his family is not a current issue that is affecting them, but it may be a relevant issue in the future.

J.S. acknowledged that there were issues concerning how the Tenant maintained the yard and that their concern regarding the state of the yard lessened as the weather improved.

G.K. advised that the upstairs area is essentially a two-bedroom space, but it is more like a one-bedroom plus a den. She stated that the den area is her designated office; however, they have no additional space should people come to visit them. She testified that when they eventually occupy the rental unit, she would move her office downstairs, which would open up the den upstairs for guests or for a child's room. The additional space downstairs would also be used for guests.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

Policy Guideline # 2A discusses good faith and states that:

"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... 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... 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."

When reviewing the evidence and submissions before me, I note that the Landlord provided three reasons to support why the Notice was served. One reason was due to the desire to expand their family. While I acknowledge that this could be a legitimate reason to require more space, I find it important to note that this particular scenario is a potential plan for the future, and there is no specific timeframe for when this could possibly happen. As a result, I do not find that this unspecified plan, with no definitive timeframe, would be a valid reason to end the tenancy now.

The second reason the Landlord provided for serving the Notice is because of the impending ability to accommodate friends or family pursuant to the provincial restart plan's phased approach to managing the COVID-19 pandemic. However, I find it important to note that at the time the Notice was served on April 26, 2021, this provincial

restart plan had not been announced yet. As a result, the Landlord could not have known that there would have been potential for the allowance of guests within a home in the near future. Furthermore, even if there was knowledge of this plan at the time the Notice was served, as this plan was a phased in approach that was dependant on the up-to-date progress of the province's COVID-19 numbers, it would have only been a speculation on whether or not the appropriate phase would have been granted to allow for increased travel and gatherings. I find that I am doubtful of the legitimacy of the Landlord's submissions on this point and this causes me to question the reliability and credibility of his testimony.

Finally, the third reason for service of the Notice is because of G.K.'s change in employment. I accept that the Landlord and G.K. may not have fully known the layout of their space at the time they took possession of the property. As well, I accept that G.K. moved to a full-time work from home situation. However, I note that G.K. had been working adequately in the den full-time since they took occupation of the rental unit in November 2020. While she indicated that her work required a space for confidentiality, if this was a necessity for her to be able to work from home, it is unclear to me how she had been permitted to continue to work from home in the six months prior to the Notice being served if she could not ensure that required level of confidentiality. Moreover, I do not find that she provided sufficient evidence to demonstrate how working in the rental unit would be any different or provide any additional level of confidentiality.

When assessing the reasons provided for serving the Notice, on the face of them, I would accept that any of these could be possible, valid reasons for service of the Notice. However, I have outlined some doubts with these reasons above. Given that the relationship has soured and become contentious due to the lengthy disagreement over the state of the yard prior to service of the Notice, I find that the Landlord's comment, that he would "be looking into other ways of dealing with this issue", stands out as being suspicious. When weighing the totality of the evidence and submissions before me, I am increasingly doubtful that the Notice was served in good faith. I find it more likely than not that the Landlord's reasons above were created to disguise an ulterior motive for serving the Notice.

Ultimately, while it may be the Landlord's intention to occupy the rental unit at some point, based on the doubts raised, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of April 26, 2021 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of April 26, 2021 to be cancelled and of no force or effect. This tenancy continues until 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: June 30, 2021

Residential Tenancy Branch