



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNQ, LRE

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

accommodation requests. 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.

Preliminary Issue - Application

The tenant filed this application to dispute a Two Month Notice to End Tenancy for Landlords Use of Property but inadvertently also checked off that he his disputing a Notice to End Tenancy Because the Tenant does not Qualify for Subsidized Rental Unit in error. Pursuant to Section 64(3)(c), the application is amended to only reflect that the tenant is disputing a Two Month Notice to End Tenancy for Landlords' Use of Property.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should an order be given to suspend or put conditions on the landlords right to enter the rental unit?

Background and Evidence

PC gave the following testimony. PC testified that she lives in Chilliwack. PC testified that her ailing brother and much of her family lives in Vancouver. PC testified that due to her age and poor health, the commute from Chilliwack to Vancouver has become very difficult. PC testified that she would like to use the subject unit whenever she wants to visit her brother or family as a place to stay so she doesn't have to commute both ways on the same day. PC testified that this unit is ideal for her as it is small and has access to the yard for her dog.

A copy of the landlord's 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice was April 30, 2022, indicating the following reason for seeking an end to this tenancy:

- *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).*

RW gave the following testimony. RW testified that the landlord owns numerous properties and could move into other locations. RW testified that the landlord will not sell

her personal residence and that she will just evict him and raise the rent. RW testified that regardless of the outcome of this hearing, he is attempting to find a new home and will move out as soon as he can.

Analysis

The relationship between the parties is an acrimonious one. Both parties accused the other of lying and fraud throughout the hearing. Both parties interrupted the other requiring me to caution each party about their behaviour. PC was especially belligerent and continued to interrupt me and the tenant when we spoke.

In addition, it is worth noting that both parties continually referred to issues about noise, behaviour, and conduct. I reminded the parties on several occasions that the notice before me is a Two Month Notice to End Tenancy for Landlords Use of Property and not a One Month Notice to End Tenancy for Cause. However, the landlord continually referred to the tenant disrupting the quiet enjoyment of other tenants and herself as well have a witness attend to discuss how disruptive the tenant is to others on the property. The witness agreed that his testimony would not be relevant to today's hearing and was not able to offer any information.

For absolute clarity, as I mentioned numerous times during the hearing, this hearing and decision relate only to the Notice before me which is a Two Month Notice to End Tenancy for Landlords Use of Property. The parties are at liberty to file a separate application if they feel it is necessary to do so.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's application seeking to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property and my findings around it are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit(e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

PC testified that her health is deteriorating and wants to move closer to her family in Vancouver. PC testified that she presently lives in Chilliwack and that the commute is becoming difficult for her. PC testified that she intends to stay in the unit several times per week to visit her brother and other family members. PC testified that she has worked hard and has earned the right to do what she wants with the property. PC testified that she isn't sure if she will live in the subject unit on a permanent basis or just as a place to stay when visiting. PC testified that she loves her home in Chilliwack and she may rent it, sell it, or have a family member move into it.

I posed the question to PC several times during the hearing as to whether she would be making the subject unit her primary residence, she declined to give a clear answer. She continually stated that once the tenant moves out, she will decide what she will do. In addition, she stated numerous times that she will only use the unit when she visits family. Based on the conflicting and at times vague testimony of PC, I hereby cancel the

notice for the following reason. PC has not provided sufficient evidence that she will be using the unit for the reason noted on the Notice.

Although it is understandable that she wants to make the choice after she has obtained the unit, the Act does not allow for that accommodation. When a landlord issues a notice to end tenancy so that they can live in the unit, the expectation is that they do that, not assess, consider, and pivot to a decision that suits their needs at the time. As the landlord herself is unclear as to what the unit will be used for at the time of this hearing, I must cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 23, 2022, the notice is if no effect or force.

Although the tenant was given a full opportunity to present his case, he did not provide sufficient evidence to be granted an order to limit or suspend the landlords right to enter the unit, accordingly; I dismiss this portion of the application.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property dated February 23, 2022 is cancelled. The tenancy continues.

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 13, 2022

Residential Tenancy Branch