



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order cancelling a notice to end the tenancy for landlord's use of property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both named landlords attended the hearing and each gave affirmed testimony. The tenant was accompanied by a support person who did not testify or take part in the hearing. The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which specify that multiple applications contained in a single application must be related, and I found that the application for monetary compensation is not related to the applications seeking cancelling notices to end the tenancy. Therefore, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed with leave to reapply.

The landlords agreed during the course of the hearing to cancel two One Month Notices to End Tenancy for Cause.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 26, 2022 was issued in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The first landlord (KR) testified that this month-to-month tenancy began on June 15, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$600.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a cottage on a 2 acre property, and the landlords also reside on the property. A portion of the tenancy agreement has been provided by the tenant for this hearing. A move-in condition inspection report was completed at the beginning of the tenancy, but a copy has not been provided for this hearing.

The landlord further testified that on October 21, 2022 the landlords served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided by the tenant for this hearing. It is dated October 21, 2022 and contains an effective date of vacancy of December 1, 2022. The reason for issuing it states: Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent. The Details of Cause(s) section is not filled in.

Another One Month Notice to End Tenancy for Cause has been provided by the tenant, but is the same as above, except that the date signed by landlord is crossed off and changed from "21" to "24" of October, 2022. The Details of Cause(s) section states: "Due to a family members health, we will be having our mother move in to the unit." It is accompanied by a note addressed to the tenant and signed by a landlord stating that the landlord neglected to fill in the Details of Cause(s) on the Notice, and revised notice will be given, and to "please accept this as your official notice to vacate."

The landlord further testified that on October 26, 2022 the landlord personally served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property, and a

copy has been provided for this hearing by the tenant. It is dated October 26, 2022 and contains an effective date of vacancy of January 1, 2023. The reason for issuing it states: 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), specifying the father or mother of the landlord or landlord's spouse. A Proof of Service document has also been provided for this hearing, which states that it was attached to the door with a witness on October 26, 2022, however the landlord testified that the tenant came out to get the Notice while the landlord was attaching it to the door.

The landlord's mother currently lives in another community about 25 minutes from the rental unit. On Thanksgiving weekend when the landlord's family was together a decision was made for the landlord's mother to occupy the rental unit. It's always been the plan for the mother to live there, being closer to many family members. She is age 92, had a fall in June that set her back, and her doctor is 1 mile away from the landlord's home. That is what affected the timing. She uses a walker and wants to be independent. The landlord's daughter and siblings live close by, and the landlord's mother won't be alone and will have company 4 or 5 times per week, even when the landlords are away. The landlord's mother cannot move into the landlord's home because of stairs.

The landlord and tenant met in May, prior to the landlord's mother taking a fall, and at that time the landlords were looking for someone for the summer. It was always to be a temporary thing and the tenant's school program was never mentioned.

The second landlord (DR) testified that it's been tough on the family to supply housing for his wife's mother, who has also been the mother of the second landlord; they are extremely close. The landlords have been kind of taking care of her, but she has been able to keep up her home, including landscaping since her husband died, but her health is not as good.

The landlords purchased the property with the landlord's mother in mind, who is not able to do what she wants to, such as gardening and taking care of her home. The landlords want her closer to family; she does not want to go to a nursing home.

The tenant testified that the landlord's good faith intent is questionable. Three different eviction notices were issued, the first for termination of employment, but the tenant was never the landlords' employee.

Information has been contradicting, such as about the landlord's mother playing Bridge and driving, but the doctor note says that she cannot drive. The landlords go away for 8

months of the year, and having the landlord's mother closer won't help. The landlord's evidence also states that the landlords are going to use the rental unit for a caretaker.

The tenant also referred to a statement from the landlords, which has been provided for this hearing by both parties. It states, "... our intention is to have a caretaker, affordable and pet friendly," which contradicts the landlords' testimony. Someone else lived in the rental unit for 9 years. When the landlords realized they could not evict for a caretaker, they tried again, and the landlords' written statement for this hearing states: "...Our intention is to have a Caretaker on the property that would benefit from having affordable housing that is pet friendly and has access to garden and beach front."

The landlords have repeated attempts to have the tenant sign a document indicating that the tenant is moving out willingly, by email, and offered the tenant \$2,000.00 to do so, but no "come-back" if the landlords use the rental unit for something else. The tenant did not sign it.

The tenant believes that the landlords use the hydro from the rental unit which the tenant pays for and did not consent to. Trying to address that is what led to the eviction, then cutting off the tenant's mail. The tenant received a note saying that the landlord's have changed the locks, so the tenant must go to the post office to figure out what to do, with no prior notice and just before Christmas.

The landlord did not serve the Two Month Notice to End Tenancy For Landlord's Use of Property by handing it to the tenant; it was taped to the door of the rental unit. When the landlords realized they couldn't evict the tenant for a caretaker, they tried again.

The tenant was in a terrible situation previously, getting a rental that didn't exist, and would not have taken a temporary place due to schooling. The tenant didn't ask for a fixed term because the tenant needed longer than a year to finish school. The landlords left the tenancy agreement in the cottage and went away travelling on their yacht, even though the landlord's mother could have had a stroke at any time. No condition inspection was done.

The tenant is in a vigorous and expensive university training, and was led to believe the tenancy would be long term. When the tenant told the landlords that the notice to end the tenancy was catastrophic for the tenant, the landlords said that it's not their problem. When the tenant refused to sign the mutual agreement to end the tenancy or accept the \$2,000.00, they called a man they ought not to have called who has intent to harm the tenant and now knows where the tenant lives. The tenant has had to file a

police report. The man has provided a letter dated March 2, 2023 so they must have done that prior to March 2.

The tenant's first witness (JU) testified that she is the tenant's therapist and has been for at least a couple of years. The witness testified that the tenant reported danger from a previous rental, and was very excited to find this long-term rental, stable and secure. The witness also recalls the tenant mentioning on numerous occasions about stress the landlords have caused by putting hydro in the tenant's name and then finding out that outbuildings were on the tenant's hydro bills. The tenant was struggling to say anything to the landlords for fear that it may threaten the rental. The witness also recalls that the tenant had mentioned that when the hydro issue was brought up by the tenant, the landlords said that the tenant was free to go if the tenant didn't like it.

The tenant's second witness (MP) testified that the tenant has house-sat for the witness and showed integrity and honesty to the witness and the witness' animals.

When the tenant moved to the community, the tenant ended up in a fake rental with police assistance. The tenant and the witness had several conversations about elevated PTSD. When the tenant found the rental, the tenant called the witness, excited about a long term rental and that she could make some extra money doing landscaping.

The witness also recalls the tenant's distress trying to deal with the landlords using the tenant's hydro, and stress about losing housing and ability to complete the university program.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

The tenant has provided a copy of the Notice, and I find that it is in the approved form and contains information required by the *Act*. Good faith intent is in dispute.

The facts include service of a One Month Notice to End Tenancy for Cause dated October 21, 2022 with the reason for issuing it: Tenant's rental unit/site is part of the tenant's

employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent. The Details of Cause(s) portion has been left blank.

The evidence also shows that another One Month Notice to End Tenancy for Cause was served, dated October 24, 2022, which is identical to the one dated October 21, 2022 except that the date signed has been changed. The reason for issuing it states: Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent. The Details of Cause(s) section states: "Due to a family members health, we will be having our mother move in to the unit." It is accompanied by a note addressed to the tenant and signed by a landlord stating that the landlord neglected to fill in the Details of Cause(s) on the Notice, and revised notice will be given, and to please accept this as official notice to vacate.

I accept that the landlords have agreed to cancel both of those notices, however I find them to be relevant and incidental to the next notice to end the tenancy. It is dated October 26, 2022, within 5 days of issuing the first Notice and within 2 days of issuing the second Notice.

I also consider the undisputed testimony of the tenant that the landlords had attempted to have the tenant mutually agree to end the tenancy for \$2,000.00 and leaving it open to the landlords to use the rental unit for any purpose.

I also consider the testimony of the tenant disputing that the landlord served the Two Month Notice personally. The Proof of Service document indicates that it was served by taping it to the door of the rental unit on October 26, 2022, which corroborates the tenant's testimony, not the testimony of either landlord.

I also note other disputed testimony, such as whether or not any move-in condition inspection report was completed. Considering the undisputed testimony of the tenant that the landlords were not there when the tenant moved in, and left a copy of the tenancy agreement for the tenant to sign, I am not satisfied that the landlords have been entirely truthful.

I highly doubt that the landlords have any intention of having the landlord's mother, in her 90's, move into the rental unit as a caretaker, manager or superintendent. Perhaps

the landlords were confused with respect to the paperwork, but the onus is on the landlords to establish good faith.

I also accept the undisputed testimony of the tenant that the landlords are away for about 8 months of the year, and I agree with the tenant that the landlords will not be able to care for the landlord's mother, although other family members are near enough. However, considering that the landlords issued 2 previous notices for a caretaker to reside in the rental unit, offered the tenant \$2,000.00 to move out on a mutual agreement, and contradicted their own evidence, I am not satisfied that good faith intent has been proven. I am not satisfied that the landlords have any intention of having the landlord's mother move into the rental unit. Therefore, I cancel the Two Month Notice to End Tenancy For Landlord's Use of Property. The tenancy continues until it has ended in accordance with the law.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlords in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order to the landlords and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated October 21, 2022 is hereby cancelled, by consent.

The One Month Notice to End Tenancy for Cause dated October 24, 2022 is hereby cancelled, by consent.

The Two Month Notice to End Tenancy For Landlord's Use of Property is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 14, 2023

Residential Tenancy Branch