



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlords attended the hearing. The landlords were represented by their counsel, RS. The landlords acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged being served with the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the notice to end tenancy for landlord's use be cancelled or upheld?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Can the tenant recover the filing fee?

Background and Evidence

The landlord gave the following submissions. The rental unit is one of two separate houses located on the property. The tenant occupies one of the houses and the other one is currently not inhabited. For ease of reference, the uninhabited home will be referred to as 23 and the rental unit occupied by the tenant will be referred to as 11.

Both properties were purchased by the landlord JR's grandparents in 1937. JR's grandmother rented house 11 to the tenant's parents sometime between 1984 and 1986 and lived in house 23. When JR's grandmother died in 1987, JR's parents moved into 23 after becoming owners of the entire property in 1990. The tenant's parents continued on as tenants in house 11 with JR's mother and father as landlords.

Between 2002 and 2010, both JR's parents and the tenant's parents died. When the tenant's parents died, this tenant started paying rent to JR's father. In 2012, JR's father was moved into a long-term facility and the house he lived in, 23, became uninhabitable and remains so today.

The current landlords purchased the entire property from JR's father in November of 2018 and met with the tenant. A verbal month to month tenancy agreement was agreed upon at \$600.00 per month for the tenant to occupy the house 11. The landlords have now approached retirement age and intend on occupying house 11 as their retirement residence as they have sold their house in Alberta. The landlords submit that their daughter and her three children lives in the town where the rental unit is located and want to be close to them upon retirement.

On February 28, 2023, the tenant was personally served with a 2 Month Notice to End Tenancy for Landlord's Use by the landlords' son in law. The signed and dated copy of the notice to end tenancy provided by the tenant indicates the rental unit will be occupied by the landlord or the landlord's spouse. The effective (move-out) date is April 30, 2023.

The tenant testified that the agreement with JR's father that he could remain living in house 11 as long as he paid rent and didn't wreck the place. He has upheld his part of the agreement. The tenant argues that when JR's father went to the care home, his son (not JR) moved into house 23. When they moved out, the tenant asked if the landlord would rent out house 23 and was told it would be fixed up as an eventual retirement house for JR and her husband.

The tenant argues that he put money into upgrading the house, such as upgrading the electrical panel to 200 amp service. The tenant also spent money on swapping out the oil heat. He wouldn't have spent the money or time fixing up the house if he knew he may be evicted. Both JR's grandmother and JR's father told him they always wanted house 11 to be a rental and they had a verbal agreement he could stay as long as he paid the rent. The tenant submits that the agreement he had with JR and her husband was never month to month.

The landlords countered the tenant's argument, stating that the tenant's rent was waived for some time in lieu of payment for the upgrades done. It was done during the previous landlord's time and has no bearing on this dispute. There is no life estate on title for this property and if there was, it is required to be registered at the land titles office.

Analysis

The tenant was served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use on February 28, 2023 and he filed his application to dispute it on the same day in accordance with section 49 of the Act.

When a tenant files an application to dispute the notice, the onus is on the landlord to provide sufficient evidence to satisfy me they intend in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit. For the following reasons, I find the landlords have provided sufficient evidence to prove to me they will occupy the rental unit, house 11.

Good faith is examined in Residential Tenancy Branch Policy Guideline 2a: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member. It states:

B. GOOD FAITH

In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 32(1)).

The landlords provided a sworn affidavit of JR, together with exhibits which establishes in my mind their intent to live in house 11. Based on that sworn affidavit, I accept that the landlords have sold their house in Alberta and will, in good faith, occupy the rental unit that they own within a reasonable period after the effective date of the notice to end tenancy. I accept that the landlords have chosen to relocate to the location where their daughter and their grandchildren live, and I find their reasoning for doing so makes sense. The burden to satisfy me the landlords will occupy the rental unit when the tenant vacates it has been satisfied.

The tenant has argued that a verbal agreement between JR's father and himself prohibits the current landlords from re-occupying the unit; or in the alternative that the tenancy agreement between himself and the current landlords was not month to month.

For the first argument, it appears the tenant is claiming a "life estate" on the property; giving the tenant the right to use and occupy the property for the duration of his lifetime. While the tenant argues that this was the oral agreement made with JR's (now deceased) father, no written record of the agreement exists. It would be patently unreasonable for me to uphold an oral agreement made with a deceased person as the potential to fabricate whatever terms favourable to the tenant would be endless. I find there is no agreement of a life estate on the property, oral, implied or written.

The second argument, that the tenancy agreement with the current landlords was not month to month is likewise without merit. Section 1 of the Act defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. When I asked the tenant what the end date of the fixed term tenancy was, the tenant had no response. By definition, the tenancy between the parties is periodic, or month to month. Section 49 allows the landlord to end a periodic tenancy for landlord's use with 2 months notice. I find the notice was issued in accordance with section 49.

I uphold the landlord's notice to end tenancy for landlord's use. Section 55 states that I must grant the landlord an Order of Possession if I uphold the landlord's notice to end tenancy after being disputed by the tenant and the notice to end tenancy complies with the form and content requirement under section 52. I have reviewed the copy of the notice provided by the tenant and I find it complies with all the form and content

requirements. As the effective date on the notice to end tenancy is April 30, 2023, I grant the landlord an Order of Possession effective that date.

The second issue identified by the tenant in his application was for an order that the landlord allow him to stay in the house or be compensated for the remaining years he would have been there, \$300,000.00. The tenant has not identified the section of the Act, regulations or tenancy agreement that the landlord is not complying with. Moreover, section 58 of the Act states that the director must not determine a dispute if the amount claimed is more than the monetary limit under the Small Claims Act. (\$35,000.00). This portion of the tenant's application is dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on April 30, 2023**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: April 19, 2023

Residential Tenancy Branch