



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, FFT**

Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Legal Counsel, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The former Landlords personally served the Two Month Notice on October 24, 2022. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on October 24, 2022 pursuant to Section 88(a) of the Act.

The Tenants testified that they served the former Landlords with the Notice of Dispute Resolution Proceeding package and some evidence for this hearing on November 15, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me

to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision.

The former Landlords forwarded the NoDRP package and subsequent evidence packages to the current Landlord. I find that the former Landlords and the current Landlord were deemed served with the NoDRP package five days after mailing them, on November 20, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The former Landlords' evidence was served on the Tenants by a process server on January 12, 2023. The Tenants confirmed receipt of the former Landlords' evidence. I find the former Landlords' evidence was sufficiently served on the Tenants on January 15, 2023 according to Section 71(2)(b) of the Act.

The current Landlord's evidence was served on February 16, 2023 by leaving a copy in a mailbox or mail slot for the address at which the Tenants reside. The Tenants confirmed receipt of the current Landlord's evidence. I find the current Landlord's evidence was deemed served on the Tenants on February 19, 2023 according to Sections 88(f) and 90(d) of the Act.

This matter was convened over two hearing times. In the second hearing time, the Tenants cross examined the Landlord and the Landlord's husband on their affidavits. The acting real estate agent did not attend either hearing times, so the Tenants were not able to cross examine him.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2016. The fixed term ended on July 31, 2017. The parties have entered into subsequent fixed term tenancies, and now the tenancy continues on a month-to-month basis. Monthly rent is \$3,298.75 payable on the first day of each month. A security deposit of \$1,525.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlords' Section 49 Two Month Notice stated the reason to end tenancy noted on the notice was that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date on the Two Month Notice was December 31, 2022.

The former Landlords testified that the current Landlord issued them a Buyers Notice to Seller for Vacant Possession of the rental unit on October 22, 2022. It was executed by the current Landlord (now called the "Landlord"). The Landlord used the address of her agent on that form.

The Landlord testified that her present home was originally purchased by her husband as an investment in 2015. The Landlord stated that their accountant told them they could avoid tax audits by putting their current home's title under her husband's company. This information was provided to the Land Owner Transparency Registry.

Beginning in July 2020, the Landlord testified that they began renting the home she is now living in for \$3,500.00 per month under a tenancy agreement between herself and her husband's company.

At the end of 2022, housing prices started to decline so the Landlord decided to purchase the subject residential property. She stated that if her and her family do not move into the residential property, the Landlord described a series of taxation issues related to their properties that would impact her and her husband.

The Landlord said her plans are to move into the rental unit, and they will rent out the home she is currently living in. The Landlord has not made any plans for their move into the rental unit because she said, they do not know when the Tenants will be moving out. The Landlord's Legal Counsel submitted that the Landlord did call the moving company but because she is not sure of the date when she would need their services, she could not make any arrangements with them. The moving company told the Landlord that they need two weeks advance notice.

The Landlord's husband deposed in his affidavit that private conversations were captured between him and the seller's acting real estate agent at the rental unit during an inspection of the home for planned renovations. The minor planned renovations deposed by the Landlord's husband are replacing the floors and toilets. The Landlord's husband stated in his affidavit that the Landlord and him plan to "rent out the basement of the Property to students in a few years when our daughters are older." The Landlord's husband also stated his company owns the property that him and his family are currently living in.

The Landlord's husband deposed that the seller's acting real estate agent talked about potential renovations they could do in the home while they were inspecting the rental unit in the dining room, "[a]lthough my wife and I did not have plans to make any major renovations upstairs, I just went along with what he was saying about making the nook a washroom." The Landlord's husband stated later, he and the seller's acting real estate agent went back to their current home and the seller's acting real estate agent gave him suggestions on how to increase their potential rental income by dividing up the common areas, such as the dining room into bedrooms.

The Tenants testify that the Landlord does not have the good faith intention to occupy the rental unit as stated in the Two Month Notice. The Tenants submit that the Landlord and her husband are real estate professionals making calculated plans on converting the rental unit into a multi-unit student rental home to maximize the Landlord's rental income.

The Tenants noted that in the Landlord's January 20, 2023 affidavit she deposed that she had been "living in a rental home with my husband and my children since July 2020 ... a short distance from the Property." In the Landlord's February 16, 2023 affidavit, she further explained that "[t]his property was purchased by my husband on behalf of his numbered company in 2015 as an investment property and he holds the property in trust for the numbered company for tax purposes."

The Landlord's husband's February 16, 2023 affidavit states that "his company owns a property located on [street name] which is very similar to the [rental unit] in terms of location, age, lot size and layout." The Landlord's husband confirmed that he purchased that property as an investment property "even though my family is currently living in it."

On January 29, 2023, the Tenants uploaded a title search of the property, and it lists the Landlord's husband as the registered owner of the home where the Landlord and her husband reside. The Landlord's February 16, 2023 affidavit contains exhibit "A" which is a month-to-month tenancy agreement between a numbered company and the Landlord.

The Tenants submit that the Landlord and her husband own over seven properties and they are very active in trading, developing, and renting properties. The Tenants submit that the Landlord is well versed in using complex financial vehicles, such as trusts and numbered corporations, to manage their properties and strategically conceal their property ownerships and claim renter status.

On November 13, 2022, the Tenants were notified by the seller's realtor that "the buyers have requested access for renovation planning." On November 19, 2022, instead of the Landlord attending this walk through to assess the rental unit for renovation planning for her family, the Landlord's husband and a realtor who "specialized in rental properties" (the "acting real estate agent") attended the rental unit for the inspection. Security cameras on the Tenants' premises purport to record conversations between the Landlord's husband and the acting real estate agent that explained:

- when is a good time to rent out rental units to students;
- renovations for renting out this property to students; and,
- how much the Landlord could rent out the renovated space.

The Tenants maintained that from the beginning of the inspection at the rental unit, the conversation solely focussed on renovating the rental unit to accommodate a multi-unit student home. The Tenants maintained that no parts of the recorded conversations were about renovations that would benefit the Landlord's family needs.

The Tenants stated that the Landlord's husband "explaining away" the planned renovations into the house conversion, as a "down the road basement suite construction" is evidence of the Landlord's bad faith. The Tenants questioned why the Landlord and her family, currently living in a four bedroom, two bath, approximately 2400 square foot home, would scale down to a two bedroom, one and a half bath, 1300 square foot upper floor home.

The Landlord seeks an Order of Possession, and the Tenants seek to cancel the Landlord's Two Month Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application.

The Tenants were personally served with the Two Month Notice on October 24, 2022. I find the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied to dispute the notice on October 30, 2022 within the 15 days after the date they received the notice.

The definition for landlord in the Act in relation to a rental unit includes the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. I find although the current Landlord used their agent's address on the Buyers Notice to Seller for Vacant Possession, this does not invalidate the Two Month Notice as the owner's agent can act in place of the Landlord under the Act.

The Landlord claims the Tenants made secret videos without her husband's knowledge. The Landlord's husband deposed in his affidavit that the Tenants captured private conversations, and he feels his privacy has been violated. I find this is irrelevant to the matter before me.

The Tenants claim that they do not believe the Landlord was acting in good faith when she issued the Two Month Notice. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

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.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive. (emphasis mine)

The Landlord's Legal Counsel submits that the Tenants' recordings of the Landlord's husband and the acting real estate agent are not trustworthy and are prejudicial to the Landlord. She alleges that the fragments of recordings that the Tenants uploaded were removed from the broader context of the situation. She stated that the Landlord's husband and the acting real estate agent discussed other things, for example their moving plans, but these conversations were not recorded.

The Landlord's Legal Counsel also stated that the reliability of the recordings is questionable.

It is the Landlord's onus to prove that she and her family intend to occupy the rental unit. Other than her and her husband's claims that this is what they plan to do, the tax considerations that would flow from this plan, and that she has to provide the movers with two-week notice, the Landlord did not provide any other evidence that they plan to occupy the rental unit. Specifically, the Landlord did not explain what renovation plans were needed for the Landlord's family to reside in the rental unit.

I place little weight on the recorded conversations and decline to consider their merit, because I find the landlord has failed to prove their entitlement for the reasons provided in the paragraph above.

I find that the Landlord has not met the good faith requirement that she intends to occupy the rental property on a balance of probabilities, and consequently I cancel the

Landlord's Two Month Notice. The tenancy will continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

I grant the Tenants' application to cancel the Landlord's Two Month Notice.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 27, 2023

Residential Tenancy Branch