



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlords’ Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlords DP and WP appearing along with witness DG. The tenant CM appeared for himself.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated December 17, 2022, with an effective date of March 1, 2023, and the landlord’s materials in response to the dispute notice. The landlords confirmed receipt of the dispute notice and the tenant’s materials. Service for both parties complies with sections 88 and 89 of the Act.

Preliminary Issue

At the outset of the hearing, landlord DP advised that there is a second landlord, WP. Therefore, based on section 64(3)(c) of the Act the application is amended to add WP as a landlord.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant? If so, are the landlords entitled to an order of possession?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on September 23, 2017, and is currently on a month to month basis. Rent is \$1,041.39 per month due on the first of the month. The tenant still occupies the rental unit.

The landlords both testified that the landlord DP is going to move into the rental unit as the landlords are having marital difficulties and wish to live apart. They are not planning on divorcing, merely separating. The witness DG also testified he understood that the landlords wished to occupy separate residences. Both landlords testified that although they own other rental properties, the landlords chose this property as it belonged to landlord DP's parents, the location is convenient, and it is a single dwelling as opposed to a duplex.

The tenant testified that he does not believe that the landlords are acting in good faith and are merely trying to evict him. He noted a previous One Month Notice to End Tenancy issued to him by the landlords. He stated that the One Month Notice to End Tenancy was not upheld, and he believes that the landlords are using another notice to end the tenancy with the tenant because they no longer wish to rent to him.

Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenant.

RTB Policy Guideline 2A gives guidance regarding 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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not 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.

Considering the RTB Policy Guidelines, I find that the landlords have satisfied their onus to establish that they are acting in good faith and that the landlord DP intends to occupy the rental unit for at least 6 months. The landlords have provided a reasonable explanation for their use of the rental unit, as well as a reasonable explanation why this rental unit as opposed to others owned by the landlords was chosen. I note that the landlords' testimony is further bolstered by the evidence of the witness DG.

I have considered the evidence of the tenant regarding the previous One Month Notice to End Tenancy that was served upon him. A previous notice to end a tenancy can be considered in determining whether the landlords are acting in good faith. I have considered it and find that while there has been previous discord between the parties, I find that the landlords' current circumstances have changed, and it is reasonable to believe that they are acting in good faith.

The Two Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlords if the Two Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlords are entitled to an order of possession effective May 31, 2023 at 1:00pm based on section 49(2)(a)(ii) of the Act.

The parties are reminded that the tenant is entitled to one-month free rent as a result of the Two Month Notice, based on section 51 of the Act.

Conclusion

The landlords are granted an order of possession which will be effective May 31, 2023 at 1:00 pm. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of 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: May 01, 2023

Residential Tenancy Branch